

IDAHO CODE

TITLE 67

STATE GOVERNMENT AND STATE AFFAIRS

Current through 2020 Regular Session

MICHIE

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R. DANIEL BOWEN
ANDREW P. DOMAN JILL S. HOLINKA
COMMISSIONERS

TITLE 67

MICHIE

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This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports: Idaho Reports

Pacific Reporter

Federal Supplement

Federal Reporter

United States Supreme Court Reports, Lawyers' Edition Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: “No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law.”

Section 67-510 Idaho Code provides: “No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.”

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936

1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952
1953	March 6, 1953
1955	March 5, 1955
1957	March 16, 1957
1959	March 9, 1959
1961	March 2, 1961
1961 (1st E.S.)	August 4, 1961
1963	March 19, 1963
1964 (E.S.)	August 1, 1964
1965	March 18, 1965
1965 (1st E.S.)	March 25, 1965
1966 (2nd E.S.)	March 5, 1966
1966 (3rd E.S.)	March 17, 1966
1967	March 31, 1967
1967 (1st E.S.)	June 23, 1967
1968 (2nd E.S.)	February 9, 1968
1969	March 27, 1969
1970	March 7, 1970
1971	March 19, 1971

1971 (E.S.)	April 8, 1971
1972	March 25, 1972
1973	March 13, 1973
1974	March 30, 1974
1975	March 22, 1975
1976	March 19, 1976
1977	March 21, 1977
1978	March 18, 1978
1979	March 26, 1979
1980	March 31, 1980
1981	March 27, 1981
1981 (E.S.)	July 21, 1981
1982	March 24, 1982
1983	April 14, 1983
1983 (E.S.)	May 11, 1983
1984	March 31, 1984
1985	March 13, 1985
1986	March 28, 1986
1987	April 1, 1987
1988	March 31, 1988
1989	March 29, 1989
1990	March 30, 1990
1991	March 30, 1991
1992	April 3, 1992
1992 (E.S.)	July 28, 1992
1993	March 27, 1993
1994	April 1, 1994
1995	March 17, 1995
1996	March 15, 1996
1997	March 19, 1997
1998	March 23, 1998
1999	March 19, 1999

2000	April 5, 2000
2001	March 30, 2001
2002	March 15, 2002
2003	May 3, 2003
2004	March 20, 2004
2005	April 6, 2005
2006	April 11, 2006
2006 (E.S)	August 25, 2006
2007	March 30, 2007
2008	April 2, 2008
2009	May 8, 2009
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014
2015	April 11, 2015
2015 (E.S.)	May 18, 2015
2016	March 25, 2016
2017	March 29, 2017
2018	March 28, 2018
2019	April 11, 2019
2020	March 20, 2020

Title 67
STATE GOVERNMENT AND STATE AFFAIRS

Chapter

- Chapter 1. Seat of Government, §§ 67-101 — 67-107.
- Chapter 2. Legislative Districts, §§ 67-201 — 67-205.
- Chapter 3. State Officers in General, §§ 67-301 — 67-303.
- Chapter 4. Legislature, §§ 67-401 — 67-465.
- Chapter 5. Enactment and Operation of Laws, §§ 67-501 — 67-514.
- Chapter 6. Employees of Legislature, §§ 67-601 — 67-610.
- Chapter 7. Legislative Services Office, §§ 67-701 — 67-704.
- Chapter 8. Executive and Administrative Officers — Governor and Lieutenant-Governor, §§ 67-801 — 67-837.
- Chapter 9. Secretary of State, §§ 67-901 — 67-916.
- Chapter 10. State Controller, §§ 67-1001 — 67-1084.
- Chapter 11. Classification and Reporting of Receipts and Warrant Disbursements, §§ 67-1101 — 67-1106.
- Chapter 12. State Treasurer, §§ 67-1201 — 67-1229.
- Chapter 13. Custodian for Money and Securities Held by State, §§ 67-1301 — 67-1304.
- Chapter 14. Attorney General, §§ 67-1401 — 67-1416.
- Chapter 15. State Superintendent of Public Instruction, §§ 67-1501 — 67-1509.
- Chapter 16. Capitol Building and Grounds, §§ 67-1601 — 67-1629.
- Chapter 17. Commissioners on Uniform Laws, §§ 67-1701 — 67-1704.
- Chapter 18. Idaho Millennium Fund, §§ 67-1801 — 67-1809.
- Chapter 19. State Planning and Coordination, §§ 67-1901 — 67-1990.
- Chapter 20. State Board of Examiners, §§ 67-2001 — 67-2031.
- Chapter 21. Other Officers and Boards, § 67-2101.
- Chapter 22. Fiscal Year, §§ 67-2201 — 67-2203.
- Chapter 23. Miscellaneous Provisions, §§ 67-2301 — 67-2358.
- Chapter 24. Civil State Departments — Organization, §§ 67-2401 — 67-2417.
- Chapter 25. Civil State Departments — Conduct, §§ 67-2501 — 67-2516.
- Chapter 26. Department of Self-Governing Agencies, §§ 67-2601 — 67-2620.
- Chapter 27. Department of Finance, §§ 67-2701 — 67-2764.
- Chapter 28. Purchasing By Political Subdivisions, §§ 67-2801 — 67-2809.
- Chapter 29. Idaho State Police, §§ 67-2901 — 67-2931.
- Chapter 30. Criminal History Records and Crime Information, §§ 67-3001 — 67-3014.
- Chapter 31. Department of Health and Welfare — Miscellaneous Provisions, §§ 67-3101 — 67-3120.
- Chapter 32. Department of Public Works. [Repealed.]
- Chapter 33. Department of Water Resources, § 67-3301.
- Chapter 34. Civil State Departments — Amendments and Repeals, §§ 67-3401 — 67-3405.
- Chapter 35. State Budget, §§ 67-3501 — 67-3532.
- Chapter 36. Standard Appropriations Act of 1945, §§ 67-3601 — 67-3614.
- Chapter 37. State Refunding Bonds. [Repealed.]
- Chapter 38. Replacement Bonds. [Repealed.]
- Chapter 39. Financial Relief of Taxing Districts Under Federal Bankruptcy Statute, §§ 67-3901 — 67-3910.
- Chapter 40. State-Tribal Relations Act, §§ 67-4001 — 67-4007.
- Chapter 41. State Historical Society, §§ 67-4101 — 67-4131.
- Chapter 42. State Parks, §§ 67-4201 — 67-4249.
- Chapter 43. Preservation of Certain Lakes as Health Resorts and Recreation Places, §§ 67-4301 — 67-4312.
- Chapter 44. Lava Hot Springs, §§ 67-4401 — 67-4409.
- Chapter 45. State Symbols, §§ 67-4501 — 67-4514.
- Chapter 46. Preservation of Historic Sites, §§ 67-4601 — 67-4619.
- Chapter 47. Department of Commerce, §§ 67-4701 — 67-4744.
- Chapter 48. Surplus Property Agency. [Repealed.]
- Chapter 49. Auditorium Districts, §§ 67-4901 — 67-4931.
- Chapter 50. Commission on Aging, §§ 67-5001 — 67-5011.
- Chapter 51. Jurisdiction in Indian Country, §§ 67-5101 — 67-5103.
- Chapter 52. Idaho Administrative Procedure Act, §§ 67-5201 — 67-5292.
- Chapter 53. Personnel System, §§ 67-5301 — 67-5343.
- Chapter 54. Commission for the Blind and Visually Impaired, §§ 67-5401 — 67-5415.
- Chapter 55. Post-Attack Resource Management Act, §§ 67-5501 — 67-5508.
- Chapter 56. Commission on Arts, §§ 67-5601 — 67-5608.
- Chapter 57. Department of Administration, §§ 67-5701 — 67-5782.
- Chapter 58. Protection of Natural Resources, §§ 67-5801 — 67-5807.
- Chapter 59. Commission on Human Rights, §§ 67-5901 — 67-5912.

Chapter 60. Idaho Women's Commission, §§ 67-6001 — 67-6007.

Chapter 61. State Employee Incentive Awards. [Repealed.]

Chapter 62. Idaho Housing and Finance Association, §§ 67-6201 — 67-6226.

Chapter 63. Constitutional Defense Council, §§ 67-6301 — 67-6305.

Chapter 64. Idaho State Building Authority Act, §§ 67-6401 — 67-6424.

Chapter 65. Local Land Use Planning, §§ 67-6501 — 67-6539.

Chapter 66. Election Campaign Contributions and Expenditures — Lobbyists, §§ 67-6601 — 67-6630.

Chapter 67. Idaho State Council on Developmental Disabilities, §§ 67-6701 — 67-6710.

Chapter 68. Economic Estimates, §§ 67-6801 — 67-6803.

Chapter 69. Food Service Facilities, §§ 67-6901 — 67-6905.

Chapter 70. Idaho Safe Boating Act, §§ 67-7001 — 67-7078.

Chapter 71. Recreational Activities, §§ 67-7101 — 67-7133.

Chapter 72. Commission on Hispanic Affairs, §§ 67-7201 — 67-7206.

Chapter 73. Idaho State Council for the Deaf and Hard of Hearing, §§ 67-7301 — 67-7308.

Chapter 74. Idaho State Lottery, §§ 67-7401 — 67-7452.

Chapter 75. Marine Sewage Disposal Act, §§ 67-7501 — 67-7509.

Chapter 76. Idaho Heritage Trust, §§ 67-7601 — 67-7604.

Chapter 77. Bingo and Raffles, §§ 67-7701 — 67-7719.

Chapter 78. Pacific Northwest Economic Region, §§ 67-7801 — 67-7803.

Chapter 79. Restrictions on Public Benefits, §§ 67-7901 — 67-7903.

Chapter 80. Regulatory Takings, §§ 67-8001 — 67-8004.

Chapter 81. Idaho Housing Trust Fund, §§ 67-8101 — 67-8109.

Chapter 82. Development Impact Fees, §§ 67-8201 — 67-8216.

Chapter 83. Idaho Food Quality Assurance Institute, §§ 67-8301 — 67-8306.

Chapter 84. [Reserved.]

Chapter 85. Idaho Hall of Fame Advisory Board. [Repealed.]

Chapter 86. Lewis and Clark Trail Committee, § 67-8601.

Chapter 87. Idaho Bond Bank Authority, §§ 67-8701 — 67-8729.

Chapter 88. Idaho Law Enforcement, Firefighting and EMS Medal of Honor, §§ 67-8801 — 67-8808.

Chapter 89. Idaho Energy Resources Authority Act, §§ 67-8901 — 67-8926.

Chapter 90. Idaho Rural Development Partnership Act, §§ 67-9001 — 67-9010.

Chapter 91. Idaho Outdoor Sport Shooting Range Act, §§ 67-9101 — 67-9105.

Chapter 92. State Procurement Act, §§ 67-9201 — 67-9234.

Chapter 93. Committee on Federalism, § 67-9301.

Chapter 94. Occupational Licensing Reform Act, §§ 67-9401 — 67-9411.

Chapter 95. Compensatory Mitigation for Impacts to Wetlands, §§ 67-9501 — 67-9503.

Chapter 96. Daylight Saving Time, § 67-9601.

Chapter 1

SEAT OF GOVERNMENT

Sec.

67-101. Location.

67-102. Short title.

67-103. Emergency temporary location of government — Declaration by governor.

67-104. Validity of acts performed at emergency temporary location.

67-105. Emergency temporary location of local governments.

67-106. Powers of officers of political subdivisions at emergency temporary location — Validity of acts.

67-107. Act supreme and controlling.

§ 67-101. Location. — The seat of government of this state is at Boise City, in the county of Ada.

History.

1864, p. 427, § 1; R.S., § 105; am. R.C., § 22; reen. C.L., § 22; C.S., § 4; I.C.A., § 65-101.

STATUTORY NOTES

Cross References.

Seat of government, Idaho **Const., Art. X, §§ 2 and 3.**

CASE NOTES

Cited **Union Cent. Life Ins. Co. v. Rahn, 63 Idaho 243, 118 P.2d 717 (1941).**

§ 67-102. Short title. — This act shall be known as the Emergency Relocation Act.

History.

1961 (E.S.), ch. 3, § 1, p. 18.

STATUTORY NOTES

Cross References.

Emergency Interim Executive and Judicial Succession Act, § 59-1401 et seq.

Compiler's Notes.

The term “this act” refers to S.L. 1961 (E.S.), Chapter 3, which is compiled as §§ 67-102 to 67-107.

§ 67-103. Emergency temporary location of government — Declaration by governor. — Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effect of a threatened enemy attack, it becomes imprudent, inexpedient or impossible to conduct the affairs of state government at the normal location of the seat thereof in the city of Boise, Ada County, Idaho, the governor shall, as often as the exigencies of the situation require, by proclamation, declare an emergency temporary location, or locations, for the seat of government at such place, or places, within or without this state as he may deem advisable under the circumstances, and shall take such action and issue such orders as may be necessary for an orderly transition of the affairs of state government to such emergency temporary location, or locations. Such emergency temporary location, or locations, shall remain as the seat of government until the legislature shall by law establish a new location, or locations, or until the emergency is declared to be ended by the governor and the seat of government is returned to its normal location.

History.

1961 (E.S.), ch. 3, § 2, p. 18.

§ 67-104. Validity of acts performed at emergency temporary location. — During such time as the seat of government remains at such emergency temporary location, or locations, all official acts now or hereafter required by law to be performed at the seat of government by any officer, agency, department, or authority of this state, including the convening and meeting of the legislature in regular, extraordinary, or emergency session, shall be as valid and binding when performed at such emergency temporary location, or locations, as if performed at the normal location of the seat of government.

History.

1961 (E.S.), ch. 3, § 3, p. 18.

§ 67-105. Emergency temporary location of local governments. —
Whenever, due to an emergency resulting from the effects of enemy attack, or the anticipated effects of a threatened enemy attack, it becomes imprudent, inexpedient or impossible to conduct the affairs of local government at the regular or usual place or places thereof, the governing body of each political subdivision of this state may meet at any place within or without the territorial limits of such political subdivision on the call of the presiding officer or any two (2) members of such governing body, and shall proceed to establish and designate by ordinance, resolution or other manner, alternate or substitute sites or places as the emergency temporary location, or locations, of government where all, or any part, of the public business may be transacted and conducted during the emergency situation. Such sites or places may be within or without the territorial limits of such political subdivision and may be within or without this state.

History.

1961 (E.S.), ch. 3, § 4, p. 18.

§ 67-106. Powers of officers of political subdivisions at emergency temporary location — Validity of acts. — During the period when the public business is being conducted at the emergency temporary location, or locations, the governing body and other officers of a political subdivision of this state shall have and possess and shall exercise, at such location, or locations, all of the executive, legislative, and judicial powers and functions conferred upon such body and officers by or under the laws of this state. Such powers and functions may be exercised in the light of the exigencies of the emergency situation without regard to or compliance with time-consuming procedures and formalities prescribed by law and pertaining thereto, and all acts of such body and officers shall be as valid and binding as if performed within the territorial limits of their political subdivision.

History.

1961 (E.S.), ch. 3, § 5, p. 18.

§ 67-107. Act supreme and controlling. — The provisions of this act shall control and be supreme in the event it shall be employed notwithstanding any statutory, charter or ordinance provision to the contrary or in conflict herewith.

History.

1961 (E.S.), ch. 3, § 6, p. 18.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1961 (E.S.), Chapter 3, which is compiled as §§ 67-102 to 67-107.

Effective Dates.

Section 7 of S.L. 1961 (E.S.), ch. 3 declared an emergency. Approved August 9, 1961.

Chapter 2

LEGISLATIVE DISTRICTS

Sec.

67-201. Legislative apportionment. [Repealed.]

67-202. Legislative districts — Senators elected — Representatives elected.
[Repealed.]

67-202A. Legislative districts — Senators elected — Representatives
elected. [Repealed.]

67-203. Election of representatives. [Repealed.]

67-204. Duty of secretary of state — Apportionment of new counties.

67-205. Unassigned precincts — Assignment by county commissioners.

§ 67-201. Legislative apportionment. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 67-201**, as compiled and reen. C.L. 4:1; C.S., § 51; I.C.A., § 65-201, was repealed by S.L. 2009, ch. 52, § 1.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-202. Legislative districts — Senators elected — Representatives elected. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 67-202**, as added by, 1992, ch. 13, § 2, p. 32; am. 1992, ch. 150, § 1, p. 451; am. 1994, ch. 397, § 1, p. 1255, was repealed by S.L. 2009, ch. 52, § 1.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-202A. Legislative districts — Senators elected — Representatives elected. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-202A, as added by 1984, ch. 173, § 2 p. 414; am. 1984, ch. 250, § 1, p. 600, was repealed by S.L. 1992, ch. 13, § 1. Prior to the repeal, the section was found to be unconstitutional in *Hellar v. Cenarrusa*, 106 Idaho 586, 682 P.2d 539 (1984).

§ 67-203. Election of representatives. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 67-203, which comprised C.L. 4:3; C.S., § 53; I.C.A., § 65-203; am. 1933, ch. 75, § 1, p. 125; am. 1941, ch. 87, § 1, p. 160; am. 1951, ch. 60, § 1, p. 88; am. 1963, ch. 15, § 1, p. 149, was repealed by S.L. 1965 (E.S.), ch. 4, § 1.

Compiler's Notes.

This section, which comprised **I.C., § 67-203**, as added by 1965 (E.S.), ch. 4, § 2, p. 19, was repealed by section 3 of S.L. 1966 (3rd E.S.), ch. 2, as added by section 5 of S.L. 1966 (3rd E.S.), ch. 3.

§ 67-204. Duty of secretary of state — Apportionment of new counties. — The secretary of state must certify to the county auditor of each county on or before the first day of April preceding a general election the number of representatives in the legislature said county will be entitled to elect at the following election. When any new county has been created, subsequent to the last general election for governor, the total vote cast for governor in the territory included in such new county and in the territory remaining in any county or counties from which said new county has been created shall be estimated by the secretary of state as nearly as possible from the election returns and the legislative apportionment figured thereon.

History.

Compiled and reen. C.L. 4:4; C.S., § 54; I.C.A., § 65-204.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

§ 67-205. Unassigned precincts — Assignment by county commissioners. — In the event in the enactment of legislation creating legislative and representative districts for the election of senators and representatives, any election precinct has been omitted from any legislative and/or representative district or has been included in more than one legislative and/or representative district, the county commissioners of the county in which any such precinct is located are authorized and directed to make such changes as are hereinafter provided. If an omitted precinct is located entirely within a district, it shall be included in such district. If an omitted precinct borders on two (2) or more districts, it shall be included in the district which has the smaller number of registered voters. If a precinct has been included in more than one legislative or more than one representative district, it shall be removed from the district or districts which have the larger number of registered voters, provided, however, that such precinct must be contiguous with the legislative and representative district with which it is included.

History.

1966 (3rd E.S.), ch. 4, § 1, p. 15.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1966 (3rd E.S.), ch. 4 declared an emergency. Approved March 26, 1966.

Chapter 3

STATE OFFICERS IN GENERAL

Sec.

67-301. Classification of officers.

67-302. Commencement of term of office.

67-303. Holding office after expiration of term.

§ 67-301. Classification of officers. — The public officers of this state are classified as follows:

1. Legislative.
2. Executive.
3. Judicial.
4. Ministerial officers and officers of the courts.

But this classification is not to be construed as defining the legal powers of either class.

History.

R.S., § 110; reen. R.C. & C.L., § 31; C.S., § 72; I.C.A., § 65-301.

STATUTORY NOTES

Cross References.

Classification of power by constitution, Idaho [Const., Art. II, § 1](#).

Contest of election of legislative and state executive officers, § 34-2101 et seq.

Public officers in general, Title 59, Idaho Code.

CASE NOTES

Presidential Electors.

Presidential electors belong to none of the classes listed in this section. [State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 P. 1060 \(1912\)](#).

§ 67-302. Commencement of term of office. — The regular term of office of state and district officers, and of the judges of the Supreme and district courts, shall commence on the first Monday of January next after their election.

History.

1890-1891, p. 57, § 13; am. 1899, p. 67, § 1; am. R.C., § 32; reen. C.L., § 32; C.S., § 73; I.C.A., § 65-302.

STATUTORY NOTES

Cross References.

Commencement of term of state executive officers, Idaho **Const., Art. IV, § 1.**

CASE NOTES

Cited State ex rel. Spofford v. Gifford, 22 Idaho 613, 126 P. 1060 (1912); Tway v. Williams, 81 Idaho 1, 336 P.2d 115 (1959).

§ 67-303. Holding office after expiration of term. — Every officer elected or appointed for a fixed term shall hold office until his successor is elected or appointed and qualified, unless the statute under which he is elected or appointed expressly declares the contrary. This section shall not be construed in any way to prevent the removal or suspension of such officer, during or after his term, in cases provided by law.

History.

1890-1891, p. 57, § 172; reen. 1899, p. 67, § 5; reen. R.C. & C.L., § 32a; C.S., § 74; I.C.A., § 65-303.

CASE NOTES

Constitutionality.

Death before qualification.

General election not held.

Watermaster.

Constitutionality.

This section is not in conflict with Idaho Const., Art. XVIII, § 6, providing for biennial election of county officers. *Clark v. Wonnacott*, 30 Idaho 98, 162 P. 1074 (1917).

Death Before Qualification.

Death of person elected to office before he qualifies does not constitute a vacancy in that office. *Clark v. Wonnacott*, 30 Idaho 98, 162 P. 1074 (1917).

General Election Not Held.

General election can be held only biennially and so, if it is not held on day fixed by law, there can be no other general election for two years thereafter. In the meantime, old officers will hold office until their successors are elected and qualified. *McGrane v. Nez Perce County*, 18 Idaho 714, 112 P. 312 (1910).

Watermaster.

Watermaster of irrigation project is administrative officer and holds office until his successor is elected or appointed and has qualified. *Big Wood Canal Co. v. Chapman*, 45 Idaho 380, 263 P. 45 (1927).

Decisions Under Prior Law

Right to Hold Over.

Right of incumbent to hold office until his successor was elected and qualified was as much a part of the estate in office as the original term. *People v. Green*, 1 Idaho 235 (1869).

Chapter 4

LEGISLATURE

Sec.

67-401. Constitution of legislature.

67-402. Terms of members.

67-403. Certificates of election.

67-404. Sessions of legislature.

67-404a. Organization of house of representatives and senate.

67-404b. Rules.

67-404c. Officers and standing committees.

67-404d. Organization of second and extraordinary sessions.

67-404e. Pending business.

67-405. Administering of oaths to members and officers — Oaths to witnesses before committees.

67-406. Compensation and mileage of members of legislature.

67-406a. Citizens' committee on legislative compensation — Members — Appointment — Terms — Election of chairman.

67-406b. Compensation and expenses.

67-406c. Secretarial and other assistance. [Repealed.]

67-407. Attendance of witness — Subpoena.

67-408. Attendance of witnesses — Service of subpoenas.

67-409. Attendance of witnesses — Refusal to obey subpoena a contempt.

67-410. Witnesses — Compelling attendance.

67-411. Witnesses — Self-criminating testimony may be exacted.

67-411A. Taking and recording testimony under oath.

67-412. Designating qualified substitute when legislator temporarily unable to perform duties.

67-412A. Compensation of legislators when not in session. [Repealed.]

67-413. Short title.

67-414. Declaration of policy.

67-415. Definitions.

67-416. Designation of emergency interim successors to legislators.

67-417. Status, qualifications and term of emergency interim successors.

67-418. Contingent method of designating emergency interim successors.

67-419. Recording and publication.

67-420. Oath of emergency interim successors.

67-421. Duty of emergency interim successors.

67-422. Convening of legislature in event of attack.

67-423. Assumption of powers and duties of legislator by emergency interim successor.

67-423A. Assumption of powers and duties of legislator by emergency interim successor.

67-424. Privileges, immunities and compensation of emergency interim successors.

67-425. Quorum and vote requirements.

67-426. Termination of operation of provisions of this act.

67-427. Legislative council created — Members — Terms — Vacancy.

67-428. Officers of council — Committees — Director of legislative services.

67-429. Powers and duties.

67-429A. State-tribal gaming compacts.

67-429B. Authorized tribal video gaming machines.

67-429C. Amendment of state-tribal gaming compacts.

67-429D. Audit of legislative department.

67-430. Meetings — Quorum — Notice — Report to legislature.

67-431. Compensation and expenses.

67-432. Joint finance-appropriations committee — Creation — Members.

67-433. Officers — Adoption of rules of procedure — Subcommittees — Meetings.

67-434. Per diem allowance and expenses. [Repealed.]

67-435. Powers and duties.

67-436. Vouchers for expenses. [Repealed.]

67-437. Departments, agencies, and institutions to submit information.

67-438. Inquisitorial authority.

67-439. Enforcement of subpoenas.

67-440. Fees and mileage of witnesses.

67-441 — 67-450. [Repealed.]

67-450A. Charges for audit.

67-450B. Independent financial audits of local governmental entities — Filing requirements.

67-450C. Independent financial audits of affiliated organizations to state governmental agencies or entities — Filing requirements.

67-450D. Independent financial audits — Designated entities.

67-450E. Local governing entities central registry — Reporting information required — Penalties for failure to report.

67-451. Legislative account created — Duties of controller — Disbursements from account — Report of disbursements.

67-451A. Legislative legal defense fund created.

67-452. Membership in Pacific Fisheries Legislative Task Force.

67-453. Statements regarding proposed constitutional amendments.

- 67-454. Subcommittees for review of administrative rules — Meetings regarding rules.
- 67-455. Governor's housing committee — Governor's residence fund.
- 67-455A. Committee may acquire and dispose of property.
- 67-456. Special committee on criminal justice reinvestment oversight.
- 67-457. Joint legislative oversight committee — Creation.
- 67-458. Definitions.
- 67-459. Term of membership and organization of committee.
- 67-460. Powers of committee.
- 67-461. Conduct of and issuance of performance evaluation reports.
- 67-462. Recording testimony under oath.
- 67-463. Assistance.
- 67-464. Quorum.
- 67-465. Special oversight committee on state funded substance abuse treatment. [Null and void.]

§ 67-401. Constitution of legislature. — The legislature consists of a senate and house of representatives, the members of which are elected from the respective senatorial and representative districts by the qualified electors of said districts.

History.

Based upon [Const., art. 3, §§ 1, 2](#), and R.S., § 115; compiled and reen. R.C., § 33; reen. C.L., § 33; C.S., § 75; I.C.A., § 65-401; am. 2009, ch. 52, § 3, p. 136.

STATUTORY NOTES

Cross References.

Extra sessions to be called by governor, Idaho [Const., Art. IV, § 9](#).

Investiture of legislative power, Idaho [Const., Art. III, § 1](#).

Proof of proceedings of legislature, § 9-315.

Amendments.

The 2009 amendment, by ch. 52, deleted “as defined by chapter 2 of this title” following “representative districts.”

Compiler’s Notes.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-402. Terms of members. — The senators and representatives shall be elected for the term of two (2) years from and after the first day of December next following the general election.

History.

1890-1891, p. 57, § 14; reen. 1899, p. 67, § 2; reen. R.C. & C.L., § 34; C.S., § 76; I.C.A., § 65-402.

STATUTORY NOTES

Cross References.

Constitutional provisions, Idaho **Const., Art. III, § 3.**

Contest of election of members of legislature, jurisdiction over, § 34-2105.

Qualifications of senators and representatives, Idaho **Const., Art. III, § 6.**

§ 67-403. Certificates of election. — The certificate of election is prima facie evidence of the right to membership.

History.

R.S., § 121; reen. R.C. & C.L., § 35; C.S., § 77; I.C.A., § 65-403.

STATUTORY NOTES

Cross References.

Issuance of certificates, § 34-1215.

§ 67-404. Sessions of legislature. — At the hour of twelve o'clock M. on the Monday on or nearest the ninth day in January the regular session of the legislature shall be convened. The presiding officer must call the same to order and preside. Neither house must transact any business, but must adjourn from day to day, until a majority of all the members authorized by law to be elected are present. Each legislature shall have a term of two (2) years, commencing on December 1 next following the general election, and shall consist of a "First Regular Session" which shall meet in the odd-numbered years and a "Second Regular Session" which shall meet in the even-numbered years and any extraordinary session or sessions which may be called as provided by law.

History.

R.S., § 122; compiled and reen. R.C., § 36; reen. C.L., § 36; C.S., § 78; I.C.A., § 65-404; am. 1970, ch. 33, § 1, p. 70; am. 1975, ch. 194, § 1, p. 539; am. 1976, ch. 75, § 1, p. 246.

RESEARCH REFERENCES

ALR. — Constitutionality of legislative prayer practices. 30 A.L.R.6th 459.

§ 67-404a. Organization of house of representatives and senate. — On the first Thursday of December in general election years, the members of the house of representatives and senate shall meet in Boise, in the capitol building or, during any renovation of the capitol building, in the building in which the legislature will hold sessions, for the purpose of organizing their respective houses. Members shall each receive compensation and expenses authorized by the citizen's committee on legislative compensation, which shall be paid from the legislative account.

History.

1967, ch. 176, § 1, p. 588; am. 2007, ch. 41, § 1, p. 101.

STATUTORY NOTES

Cross References.

Citizens' committee on legislative compensation, Idaho [Const., Art. III, § 23](#) and [§ 67-406a](#).

Legislative account, [§ 67-451](#).

Amendments.

The 2007 amendment, by ch. 41, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 4 of S.L. 2007, ch. 41 declared an emergency. Approved March 2, 2007.

CASE NOTES

Construction.

In 1967, this section was passed, for the first time separating an organizational session from the regular session of the Idaho legislature; this procedure was not part of the legislative process designed by the drafters of the Idaho Constitution in 1889, and it is not helpful in analyzing the

purpose of the tie breaking procedures provided in Idaho Const., Art. IV, § 13. *Sweeney v. Otter*, 119 Idaho 135, 804 P.2d 308 (1990).

§ 67-404b. Rules. — At the beginning of the first regular session, or at the organizational session, of each legislature, both houses shall adopt permanent rules of procedures. The rules in effect at the last regular session of the immediately preceding legislature shall serve as the temporary rules of the legislature until the adoption of permanent rules.

History.

I.C., § 67-404b, as added by 1970, ch. 33, § 2, p. 70.

§ 67-404c. Officers and standing committees. — (1) The officers of the legislature, elected or selected at the first regular session, or at the organizational session, shall serve during the term of the legislature.

(2) The standing committees of the legislature, when created and designated by rule of the respective house, shall be permanent standing committees and shall exist during the term of the legislature.

History.

I.C., § 67-404c, as added by 1970, ch. 33, § 3, p. 70.

§ 67-404d. Organization of second and extraordinary sessions. — On the day set for the assembly of the second regular session or an extraordinary session of the legislature, the presiding officer, or his successor, shall administer the oath of office to new members and proceed with the business of the house in accordance with the rules of the respective houses.

History.

I.C., § 67-404d, as added by 1970, ch. 33, § 4, p. 70.

§ 67-404e. Pending business. — Any business, bill or resolution pending at the final adjournment of a session shall not be carried over to the next regular or extraordinary session; provided, however, that any such bill or resolution may be reintroduced at any subsequent session of the legislature.

History.

I.C., § 67-404e, as added by 1970, ch. 33, § 5, p. 70.

§ 67-405. Administering of oaths to members and officers — Oaths to witnesses before committees. — The president and president pro tem, of the senate, and the speaker and speaker pro tem, of the house, may administer the oath of office to any member, and to the officers of their respective bodies. The members of any committee may administer oaths to witnesses in any matter under examination.

History.

R.S., § 123; reen. R.C. & C.L., § 37; C.S., § 79; I.C.A., § 65-405.

§ 67-406. Compensation and mileage of members of legislature. — Each member of the legislature shall receive for his services compensation and expenses in accordance with rates established by the citizens' committee on legislative compensation authorized in section 67-406b, Idaho Code.

History.

1921, ch. 4, § 1, p. 6; § 65-406; am. 1947, ch. 2, § 1, p. 4; am. 2009, ch. 52, § 4, p. 136.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 52, rewrote the section, deleting archaic language and providing correct terminology.

Compiler's Notes.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

Effective Dates.

Section 3 of S.L. 1921, ch. 4 declared an emergency. Approved January 19, 1921.

Section 2 of S.L. 1947, ch. 2 declared an emergency. Approved January 9, 1947.

CASE NOTES

Constitutional Provision.

The original state constitution contained no provision granting the members of the legislature the right to be reimbursed by the state for their expenses for subsistence and lodging while in the service of the state. *Peck v. State*, 63 Idaho 375, 120 P.2d 820 (1941).

§ 67-406a. Citizens' committee on legislative compensation — Members — Appointment — Terms — Election of chairman. — There is hereby established the citizens' committee on legislative compensation, to consist of three (3) members appointed by the governor and three (3) members appointed by the supreme court. Members of the committee shall be residents of the state of Idaho and shall be appointed from the public and without regard to political affiliation. No one may be appointed to the committee who is an official or employee of the state of Idaho or any department, agency, or political subdivision thereof or who is an official or employee of any county, municipality or other unit of local government or of any agency or institution to which any state funds are appropriated.

Of the members of the committee first to be appointed, one (1) appointee each of the governor and the supreme court shall be appointed for a term of two (2) years, one (1) appointee each of the governor and the supreme court shall be appointed for a term of three (3) years, and one (1) appointee each of the governor and the supreme court shall be appointed for a term of four (4) years, commencing July 1, 1967. Thereafter, all members of the committee shall be appointed for a four (4) year term, commencing July 1st. Vacancies shall be filled in the same manner as the original appointments and for the balance of the unexpired term. The committee shall elect one (1) of its members chairman, and members of the committee shall be compensated as provided by [section 59-509\(b\), Idaho Code](#), which expenses shall be paid from the moneys appropriated for the operation of the legislature.

History.

1967, ch. 303, § 1, p. 861; am. 1976, ch. 286, § 1, p. 987; am. 1980, ch. 247, § 81, p. 582.

§ 67-406b. Compensation and expenses. — No member of the legislature of the state of Idaho shall receive any compensation for services rendered or expenses incurred as a legislator, except as set by the committee.

The committee shall, on or before November 30, 1976, establish the rate of compensation and expenses for services to be rendered by members of the legislature during the two (2) year period commencing on December 1, 1976. The compensation and expenses so established shall, on or before such date, be filed with the secretary of state and the state controller. The rates thus established shall be the rates applicable for the two (2) year period specified unless prior to the twenty-fifth legislative day of the regular 1977 legislative session, by concurrent resolution, the senate and house of representatives shall reject said rates of compensation and expenses and declare the same to be inoperative.

Thereafter the committee shall on or before the last day of November of each even numbered year, establish the rate of compensation and expenses for services to be rendered by members of the legislature during the two (2) year period commencing on the first day of December of such year. The compensation and expenses so established shall, on or before such date, be filed with the secretary of state and the state controller. The rates thus established shall be the rates applicable for the two (2) year period specified unless prior to the twenty-fifth legislative day of the next regular biennial session, by concurrent resolution, the senate and house of representatives shall reject said rates of compensation and expenses and declare the same to be inoperative.

History.

1967, ch. 303, § 2, p. 861; am. 1976, ch. 286, § 2, p. 987; am. 1994, ch. 180, § 166, p. 420.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since the constitutional amendment was adopted, the amendment of this section by Laws 1994, ch. 180, § 166 was effective January 2, 1995.

§ 67-406c. Secretarial and other assistance. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 303, § 3, p. 861; am. 1976, ch. 286, § 3, p. 987, was repealed by S.L. 2009, ch. 52, § 1.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-407. Attendance of witness — Subpoena. — A subpoena requiring the attendance of any witness or the production of any papers or other materials before either house of the legislature, or a committee of the legislature, may be issued by the president or president pro tempore of the senate, speaker of the house, or the chairman of any committee before whom the attendance of the witness or the production of papers or other materials is desired. The subpoena must:

1. State whether the proceeding is before the senate or house, or a committee; 2. Be addressed to the witness, and name with particularity the papers or other materials to be produced by the witness, if papers and materials are requested; 3. Require the attendance of the witness or the production of such papers or other materials by the witness at a time and place certain to be shown on the subpoena; 4. Be signed by the president or president pro tempore of the senate, speaker of the house, or the chairman of a committee; and 5. Inform the witness that the witness will be paid mileage, meals and lodging, if necessary, or otherwise provided necessary transportation, meals or lodging for attendance. Any witness subpoenaed under this section shall be entitled to necessary mileage, meals and lodging at the rates established by the state board of examiners pursuant to [section 67-2008, Idaho Code](#), for official travel for state officers and employees, to be paid from the legislative account if other transportation, meals and lodging are not tendered for the witness's attendance.

History.

R.S., § 145; am. R.C., § 58; reen. C.L., § 58; C.S., § 99; I.C.A., § 65-407; am. 1995, ch. 232, § 1, p. 787.

STATUTORY NOTES

Cross References.

Administering of oath to witnesses in any matter under examination by legislature, § 67-405.

Legislative account, § 67-451.

State board of examiners, § 67-2001 et seq.

§ 67-408. Attendance of witnesses — Service of subpoenas. — The subpoena may be served by the sheriff of any county in which the subpoenaed person may be found or by any person authorized to serve process of courts of record, and the affidavit of the person serving the subpoena that he delivered a copy to the witness is evidence of service.

History.

R.S., § 146; reen. C.L. & C.L., § 59; C.S., § 100; I.C.A., § 65-408; am. 1995, ch. 232, § 2, p. 787.

§ 67-409. Attendance of witnesses — Refusal to obey subpoena a contempt. — If any witness neglects or refuses to obey such subpoena, or appearing, refuses to testify, or produce the subpoenaed documents or other materials, the senate or house may, by resolution entered on the journal, cite the witness for contempt. It shall be the duty of the district court, upon application of the presiding officer of the house resolving to cite the witness for contempt, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or the refusal to testify or produce documents or other materials in court.

History.

R.S., § 147; am. R.C., § 60; reen. C.L., § 60; C.S., § 101; I.C.A., § 65-409; am. 1995, ch. 232, § 3, p. 787.

STATUTORY NOTES

Cross References.

Contempt, § 7-601 et seq.

§ 67-410. Witnesses — Compelling attendance. — Any witness neglecting or refusing to attend in obedience to a subpoena issued under sections 67-407 through 67-410, Idaho Code, may at the written direction of the president or president pro tempore of the senate or the speaker of the house of representatives be arrested by the sergeant-at-arms, a sheriff or such other person designated in writing and brought before the senate or house. The only warrant of authority necessary to authorize such arrest is a copy of a resolution of the senate or house citing the person for contempt, signed by the presiding officer, and countersigned by the clerk, and the written authorization for arrest signed by the arresting officer.

History.

R.S., § 148; am. R.C., § 61; reen. C.L., § 61; C.S., § 102; I.C.A., § 65-410; am. 1995, ch. 232, § 4, p. 787.

STATUTORY NOTES

Effective Dates.

Section 7 of S.L. 1995, ch. 232 declared an emergency. Approved March 20, 1995.

§ 67-411. Witnesses — Self-criminating testimony may be exacted. —

No statement made by any such witness on such examination before either house, or a committee, is competent evidence in any criminal proceeding against such witness; nor can such witness refuse to testify to any fact or to produce any paper, touching which he is examined, for the reason that his testimony or the production of such paper may tend to disgrace him, or render him infamous. Nothing in this section exempts any witness from prosecution and punishment for perjury committed by him on such examination.

History.

R.S., § 149; reen. R.C. & C.L., § 62; C.S., § 103; I.C.A., § 65-411.

STATUTORY NOTES

Cross References.

Perjury, § 18-5401 et seq.

§ 67-411A. Taking and recording testimony under oath. — Whenever conducting legislative business, a committee may require that testimony be given under oath, which may be administered by the chairman or by a person authorized by law to administer oaths, and may require that the testimony be recorded by an official court reporter or by some other competent person, under oath, which report when written, certified and approved by the person as being the direct transcript of the testimony, proceedings or documents shall be prima facie a correct statement of the testimony and proceedings provided that the person's signature to the certificate shall be duly acknowledged by him before a notary public. Any person who takes an oath pursuant to this section who states as true any material matter which he knows to be false is guilty of perjury and shall be punished pursuant to chapter 54, title 18, Idaho Code.

History.

I.C., § 67-411A, as added by 1995, ch. 232, § 6, p. 787.

STATUTORY NOTES

Effective Dates.

Section 7 of S.L. 1995, ch. 232 declared an emergency. Approved March 20, 1995.

§ 67-412. Designating qualified substitute when legislator temporarily unable to perform duties. — (1) In the event that a legislator is temporarily unable to perform the duties of his office, the legislator may designate a qualified person to succeed to the powers and duties, but not the office, of the legislator until the incumbent legislator is able to resume performance of his duties or a vacancy occurs in the office. If a legislator appoints a temporary successor, that person shall be designated or serve as a temporary substitute only if the person is qualified, under the Idaho constitution and statutes, to hold the office of the legislator to whose powers and duties the person is designated to succeed, which shall be verified by the legislator.

(2) In the event of an attack, as defined in [section 67-415, Idaho Code](#), the provisions of the emergency interim legislative succession act shall apply.

History.

[I.C., § 67-412](#), as added by 2014, ch. 348, § 1, p. 869.

STATUTORY NOTES

Cross References.

Emergency interim legislative succession act, § 67-413 et seq.

Prior Laws.

Former § 67-412, Allowance for members, which comprised 1951, ch. 94, § 1, p. 184; am. 1957, ch. 135, § 1, p. 228; am. 1965, ch. 5, § 1, p. 7; am. 1969, ch. 56, § 2, p. 194; Init. Measure 1970, No. 1; am. 1971, ch. 89, § 1, p. 191; am. 1973, ch. 298, § 1, p. 628; am. 1975, ch. 183, § 1, p. 500; am. 1976, ch. 110, § 1, p. 436; am. 2003, ch. 32, § 35, p. 115, was repealed by S.L. 2009, ch. 52, § 1.

**§ 67-412A. Compensation of legislators when not in session.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 67-412A**, as added by S.L. 1967, ch. 427, § 1, p. 1243; am. 1967 (1st E.S.), ch. 1, § 1, p. 7; am. 1969, ch. 56, § 3, p. 194, was repealed by Initiated Measure No. 1, approved by the voters at the November 3, 1970 election by 132,511 to 91,372.

§ 67-413. Short title. — This act shall be known as the “Emergency Interim Legislative Succession Act.”

History.

1961 (E.S.), ch. 4, § 1, p. 20.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1961 (E.S.), Chapter 4, which is compiled as §§ 67-413 to 67-423 and 67-424 to 67-426.

§ 67-414. Declaration of policy. — The legislature declares: (1) That recent technological developments make possible an enemy attack of unprecedented destructiveness, which may result in the death or inability to act of a large proportion of the membership of the legislature; (2) That to conform in time of attack to existing legal requirements pertaining to the legislature would be impracticable, would admit of undue delay, and would jeopardize continuity of operation of a legally constituted legislature; and (3) That it is therefore necessary to adopt special provisions as hereinafter set out for the effective operation of the legislature.

History.

1961 (E.S.), ch. 4, § 2, p. 20.

§ 67-415. Definitions. — As used in this act:

(a) “Attack” means any action or series of actions taken by an enemy of the United States resulting in substantial damage or injury to persons or property in this state whether through sabotage, bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or methods.

(b) “Unavailable” means absent from the place of session (other than on official business of the legislature), or unable, for physical, mental or legal reasons, to exercise the powers and discharge the duties of a legislator, whether or not such absence or inability would give rise to a vacancy under existing constitutional or statutory provisions.

History.

1961 (E.S.), ch. 4, § 3, p. 20.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” in the introductory paragraph refers to S.L. 1961 (E.S.), Chapter 4, which is compiled as §§ 67-413 to 67-423 and 67-424 to 67-426.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-416. Designation of emergency interim successors to legislators.

— Each legislator shall designate not fewer than three (3) or more than seven (7) emergency interim successors to his powers and duties and specify their order of succession. Each legislator shall review and, as necessary, promptly revise the designations of emergency interim successors to his powers and duties to insure that [at] all times there are at least three (3) such qualified emergency interim successors.

History.

1961 (E.S.), ch. 4, § 4, p. 20.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the end of the section was added by the compiler to supply a missing term.

§ 67-417. Status, qualifications and term of emergency interim successors. — An emergency interim successor is one who is designated for possible temporary succession to the powers and duties, but not the office, of a legislator. No person shall be designated or serve as an emergency interim successor unless he may under the constitution and statutes hold the office of the legislator to whose powers and duties he is designated to succeed. But no constitutional or statutory provision prohibiting a legislator from holding another office or prohibiting the holder of another office from being a legislator shall be applicable to an emergency interim successor. An emergency interim successor shall serve at the pleasure of the legislator designating him or of any subsequent incumbent of the legislative office.

History.

1961 (E.S.), ch. 4, § 5, p. 20.

§ 67-418. Contingent method of designating emergency interim successors. — Prior to an attack, if a legislator fails to designate the required minimum number of emergency interim successors within thirty (30) days following the effective date of the act or, after such period, if for any reason the number of emergency interim successors for any legislator falls below the required minimum and remains below such minimum for a period of thirty (30) days, then the party leader of the same political party in the same house as such legislator shall promptly designate as many emergency interim successors as are required to achieve such minimum number. But the party leader shall not assign to any of his designees a rank in order of succession higher than that of any remaining emergency interim successor previously designated by a legislator for succession to his own powers and duties. Each emergency interim successor designated by a party leader shall serve at the pleasure of the person designating him, but the legislator for whom the emergency interim successor is designated or any subsequent incumbent of his office may change the rank in order of succession or replace at his pleasure any emergency interim successor so designated.

History.

1961 (E.S.), ch. 4, § 6, p. 20.

STATUTORY NOTES

Compiler's Notes.

The phrase “the effective date of the act” in the first sentence means the effective date of Laws 1961 (E.S.), Chapter 4, which became effective August 1, 1961.

§ 67-419. Recording and publication. — Each designation of an emergency interim successor shall become effective when the legislator or party leader making the designation files with the secretary of state the successor's name, address and rank in order of succession. The removal of an emergency interim successor or change in order of succession shall become effective when the legislator or party leader so acting files this information with the secretary of state. All such data shall be open to public inspection. The secretary of state shall inform the governor, the Idaho office of emergency management, the presiding officer of the house concerned and all emergency interim successors of all such designations, removals and changes in order of succession.

History.

1961 (E.S.), ch. 4, § 7, p. 20; am. 2020, ch. 49, § 1, p. 115.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2020 amendment, by ch. 49, substituted “Idaho office of emergency management” for “department of disaster relief and civil defense” in the current last sentence and deleted the former last sentence, which read: “The presiding officer of each house shall cause to be entered all information regarding emergency interim successors for the house in its public journal at the beginning of each legislative session and shall cause to be entered all changes in membership or order of succession as soon as possible after their occurrence.”

§ 67-420. Oath of emergency interim successors. — Promptly after designation each emergency interim successor shall take the oath required for the legislator to whose powers and duties he is designated to succeed. No other oath shall be required.

History.

1961 (E.S.), ch. 4, § 8, p. 20.

§ 67-421. Duty of emergency interim successors. — Each emergency interim successor shall keep himself generally informed as to the duties, procedures, practices and current business of the legislature, and each legislator shall assist his emergency interim successor to keep themselves so informed.

History.

1961 (E.S.), ch. 4, § 9, p. 20.

§ 67-422. Convening of legislature in event of attack. — In the event of an attack, the governor shall call the legislature into session as soon as practicable, and in any case within ninety (90) days following the inception of the attack. If the governor fails to issue such call, the legislature shall, on the ninetieth day from the date of inception of the attack, automatically convene at the place where the governor then has his office. Each legislator and each emergency interim successor, unless he is certain that the legislator to whose powers and duties he is designated to succeed or any emergency interim successor higher in order of succession will not be available [unavailable], shall proceed to the place of session as expeditiously as practicable. At such session or at any session in operation at the inception of the attack, and at subsequent sessions, limitations on the length of session and on the subjects which may be acted upon shall be suspended.

History.

1961 (E.S.), ch. 4, § 10, p. 20.

STATUTORY NOTES

Compiler's Notes.

The bracketed word “unavailable” in the third sentence was inserted by the compiler as that seems to be the intended term. See § 67-415 for definition of “unavailable”.

§ 67-423. Assumption of powers and duties of legislator by emergency interim successor. — If in the event of an attack a legislator is unavailable, his emergency interim successor highest in order of succession who is not unavailable shall, except for the power and duty to appoint emergency successors, exercise the powers and assume the duties of such legislator. An emergency interim successor shall exercise these powers and assume these duties until the incumbent legislator, an emergency interim successor higher in order of succession, or a legislator appointed or elected and legally qualified can act. Each house of the legislature shall, in accordance with its own rules, determine who is entitled under the provisions of this act to exercise the powers and assume the duties of its members. All constitutional and statutory provisions pertaining to ouster of a legislator shall be applicable to an emergency interim successor who is exercising the powers and assuming the duties of a legislator.

History.

1961 (E.S.), ch. 4, § 11, p. 20.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the third sentence refers to S.L. 1961 (E.S.), Chapter 4, which is compiled as §§ 67-413 to 67-423 and 67-424 to 67-426.

§ 67-423A. Assumption of powers and duties of legislator by emergency interim successor. — If in the event a legislator dies or resigns the office, the legislator's emergency interim successor highest in order of succession who is not unavailable shall, except for the power and duty to appoint emergency successors, exercise the powers and assume the duties of such legislator. An emergency interim successor shall exercise these powers and assume these duties until an emergency interim successor higher in order of succession, or a replacement legislator appointed pursuant to section 59-904A, Idaho Code, and legally qualified can act. Each house of the legislature shall, in accordance with its own rules, determine who is entitled under the provisions of this chapter to exercise the powers and assume the duties of its members. All constitutional and statutory provisions pertaining to ouster of a legislator shall be applicable to an emergency interim successor who is exercising the powers and assuming the duties of a legislator.

History.

I.C., § 67-423A, as added by 1999, ch. 297, § 1, p. 745; am. 2006, ch. 34, § 1, p. 98.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 34, deleted “in the event of death” from the end of the section heading, substituted “dies or resigns the office, the legislator's” for “dies, his” near the beginning of the first sentence, and substituted “this chapter” for “this act” in the next-to-the-last sentence.

Effective Dates.

Section 2 of S.L. 1999, ch. 297 declared an emergency. Approved March 24, 1999.

§ 67-424. Privileges, immunities and compensation of emergency interim successors. — When an emergency interim successor exercises the powers and assumes the duties of a legislator, he shall be accorded the privileges and immunities, compensation, allowances and other perquisites of office to which a legislator is entitled. In the event of an attack, each emergency interim successor, whether or not called upon to exercise the powers and assume the duties of a legislator, shall be accorded the privileges and immunities of a legislator while traveling to and from a place of session and shall be compensated for his travel in the same manner and amount as a legislator. This section shall not in any way affect the privileges, immunities, compensation, allowances or other perquisites of the office of an incumbent legislator.

History.

1961 (E.S.), ch. 4, § 12, p. 20.

§ 67-425. Quorum and vote requirements. — In the event of an attack, (1) quorum requirements for the legislature shall be suspended, and (2) where the affirmative vote of a specified proportion of members for approval of a bill, resolution or other action would otherwise be required, the same proportion of those voting thereon shall be sufficient.

History.

1961 (E.S.), ch. 4, § 13, p. 20.

§ 67-426. Termination of operation of provisions of this act. — The authority of emergency interim successors to succeed to the powers and duties of legislators, and the operation of the provisions of this act relating to quorum, the number of affirmative votes required for legislative action, and limitations on the length of sessions and the subjects which may be acted upon, shall expire two (2) years following the inception of an attack, but nothing herein shall prevent the resumption before such time of the filling of legislative vacancies and the calling of elections for the legislature in accordance with applicable constitutional and statutory provisions. The governor, acting by proclamation, or the legislature, acting by concurrent resolution, may from time to time extend or restore such authority or the operation of any of such provisions upon a finding that events render the extension or restoration necessary, but no extension or restoration shall be for a period of more than one (1) year.

History.

1961 (E.S.), ch. 4, § 14, p. 20.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the first sentence refers to S.L. 1961 (E.S.), Chapter 4, which is compiled as §§ 67-413 to 67-423 and 67-424 to 67-426.

Section 15 of S.L. 1961 (E.S.), ch. 4 read: “If a part of this act is invalid, all valid parts that are separable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are separable from the invalid applications.”

Effective Dates.

Section 16 of S.L. 1961 (E.S.), ch. 4 declared an emergency. Approved August 9, 1961.

§ 67-427. Legislative council created — Members — Terms — Vacancy. — There is hereby created a legislative council which shall consist of the president pro tempore of the senate, the speaker of the house of representatives, the majority and minority floor leaders of each house, two (2) senators to be selected by the members of the majority party in the senate, two (2) senators to be selected by the members of the minority party in the senate, two (2) representatives to be selected by the members of the majority party in the house of representatives and two (2) representatives to be selected by the members of the minority party in the house of representatives. The council shall meet at least two (2) times each year or as may be necessary as provided for in section 67-430, Idaho Code. Members of the council shall hold office for two (2) years concurrent with the first and second regular sessions of the legislature until the organization of the council during the following first regular session. The legislative council shall appoint members to fill any vacancies that occur during the interim. Provided however, that any member so appointed shall be from the same house and the same political party as the member whose seat was vacated. Such member shall serve until the next regular legislative session. During the next regular legislative session, the members of the same house and the same political party as the member whose seat was vacated shall elect a member to fill the vacancy for the unexpired term of his predecessor.

History.

1963, ch. 57, § 1, p. 222; am. 1967, ch. 365, § 1, p. 1054; am. 2014, ch. 123, § 1, p. 353.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 123, substituted “at least two (2) times each year or as may be necessary as provided for in [section 67-430, Idaho Code](#)” for “as soon as practicable during each regular biennial session following the selection of all members of the council” in the second sentence; inserted “for two (2) years concurrent with the first and second regular sessions of the legislature” and substituted “first regular session” for “regular biennial

session” in the third sentence; and substituted the last four sentences for the former last sentence, relating to vacancies on the council.

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-428. Officers of council — Committees — Director of legislative services. — The president pro tempore of the senate and the speaker of the house of representatives shall serve as cochairmen of the council. The council may adopt its own rules of procedure and appoint such committees as may be necessary for the proper and efficient performance of its duties. Committees shall consist of members of the council and other members of the legislature. The council shall appoint a director of legislative services, who shall serve at the pleasure of the council, and the council may employ such other employees and engage the services of such persons and agencies as may be necessary or desirable in the performance of its duties.

History.

1963, ch. 57, § 2, p. 222; am. 1967, ch. 365, § 2, p. 1054; am. 1996, ch. 159, § 1, p. 502; am. 2009, ch. 52, § 5, p. 136; am. 2014, ch. 123, § 2, p. 353.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

Amendments.

The 2009 amendment, by ch. 52, deleted the former last sentence, which read: “The director of legislative services and other employees shall serve at the pleasure of the council and each shall be paid a salary to be fixed by council”; and in the present last sentence, inserted “who shall serve at the pleasure of the council.”

The 2014 amendment, by ch. 123, rewrote the former first and second sentences, which read: “The council shall select a chairman and a vice-chairman, one of whom shall be a senator and the other a representative and it shall adopt its own rules of procedure. The council shall appoint such committees as may be necessary for the proper and efficient performance of its duties”.

Compiler’s Notes.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-429. Powers and duties. — (1) It shall be the duty of the council to collect and compile information, to draft bills and to conduct research upon any subject which the legislature may authorize or direct or upon any subject which it may determine, provided that all activities of the council must be reasonably related to a legislative purpose. The legislature may make specific assignments to the council by a concurrent resolution approved by both houses.

(2) The council may hold public hearings and it may authorize or direct any of its committees to hold public hearings on any matters within the jurisdiction of the council.

(3) For the purpose of conducting any study within the jurisdiction of the council, by resolution adopted by the affirmative vote of two-thirds (2/3) of the entire membership of the council, the chairman of the council may subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence or other documents or records which the council deems relevant or material to any matter on which the council or any committee is conducting a study.

(4) It shall be the duty of the council to superintend and administer the legislative space in the capitol building at all times, and to prepare such space when required for the sessions of the legislature, which shall include the provision of furniture and equipment.

(5) The legislative council shall review and make recommendations to the administrator of the division of human resources on all aspects of the state personnel system, including policies, wages and salaries.

(6) The council shall release audit reports prepared by the legislative audits division of the legislative services office as provided in [section 67-435, Idaho Code](#).

History.

1963, ch. 57, § 3, p. 222; am. 1967, ch. 365, § 3, p. 1054; am. 1977, ch. 306, § 1, p. 855; am. 1986, ch. 134, § 8, p. 355; am. 1993, ch. 327, § 2, p. 1186; am. 1994, ch. 180, § 167, p. 420; am. 1994, ch. 181, § 4, p. 575; am. 1999, ch. 370, § 18, p. 976; am. 2009, ch. 52, § 6, p. 136.

STATUTORY NOTES

Cross References.

Administrator of division of human resources, § 67-5308.

Legislative Intent.

Section 1 of S.L. 1993, ch. 327 read: “The purpose of this act is to modernize the provision of professional staff services to the legislature, to provide a performance evaluation function within the legislative branch of government, to provide legislative committees and legislators with professional staff support, to increase communication and efficiency and enhance productivity within the legislative branch of government of this state.”

Amendments.

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 180, § 167, in subdivision (13)(d), substituted “state controller, director of the department of finance” for “state auditor, state commissioner of finance”; and in subdivision (13)(i), substituted “state controller” for “state auditor” in the last sentence.

The 1994 amendment, by ch. 181, § 4, in the introductory paragraph of subsection (13), inserted “and commencing for fiscal year 1995 and each year thereafter shall provide for an annual statewide financial audit of the statewide annual financial report prepared by the state controller”; in subdivision (13)(d), substituted “state controller, director of the department of finance” for “state auditor, state commissioner of finance”; and in subdivision (13)(i), substituted “state controller” for “state auditor” in the last sentence.

The 2009 amendment, by ch. 52, deleted subsection (3), which read: “The council shall establish and maintain a legislative reference library” and redesignated the subsequent subsections accordingly; added subsection (6); and deleted subsections (7) through (13), dealing with powers and duties of the legislative council.

Compiler’s Notes.

Section 41 of S.L. 1993, ch. 327 read: “All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose.”

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The constitutional amendment, changing the name of the state auditor to the state controller, was approved by the electorate at the November 1994

general election, making the amendments of this section by S.L. 1994, ch. 180 and S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-429A. State-tribal gaming compacts. — (1) The governor or his designee may represent the state of Idaho in any gaming negotiations the state is requested to participate in pursuant to 25 U.S.C. section 2701 et seq. The director of legislative services or his designee may attend all negotiations pursuant to this section as an observer and shall brief the membership of the legislative council on the status of the negotiations.

(2) The state may enter into those gaming compacts negotiated with Indian tribes pursuant to this section provided:

(a) The compact only authorizes an Indian tribe to conduct those forms of gaming authorized by Idaho law;

(b) The compact does not obligate the state of Idaho to appropriate state funds; and

(c) The governor serves a copy of the compact on each member of the legislative council at least twenty-one (21) calendar days before the compact is signed.

(3) Any proposed gaming compact not complying with subsection (2) of this section shall be null and void unless ratified by both houses of the legislature by adoption of a concurrent resolution.

(4) No power, privilege or other authority shall be exercised under the provisions of this section where otherwise prohibited by the constitution or laws of the state of Idaho or the United States.

(5) The provisions of this section shall not be construed as a waiver of any defenses or immunities to which the state of Idaho is entitled under either the constitution or the laws of the state of Idaho or the United States.

History.

I.C., § 67-429A, as added by 1993, ch. 408, § 2, p. 1500; am. 1996, ch. 159, § 2, p. 502.

STATUTORY NOTES

Cross References.

Legislative council, § 67-427.

Legislative Intent.

Section 1 of S.L. 1993, ch. 408 read: “The purpose of this act is to designate the governor to represent the state of Idaho in any negotiations required between the state and a federally recognized Indian tribe pursuant to the Indian Gaming Regulatory Act, [25 U.S.C. section 2701 et seq.](#), and to provide for state approval of certain gaming compacts.”

Compiler’s Notes.

Sections 1-3 of S.L. 1993, ch. 367 read:

“Section 1. Background and Purpose. On December 18, 1992, an Indian Gaming Compact authorizing and regulating Class III gaming on the Coeur d’Alene Indian Reservation was executed by the Coeur d’Alene Tribe and the Governor of the State of Idaho. This Compact identified two legal issues regarding the Indian Gaming Regulatory Act, [25 U.S.C. section 2701 et seq.](#), that could not be resolved by the parties. It was agreed upon in the Compact that an action seeking a declaratory judgment in the United States District Court for the District of Idaho would by the proper method to resolve these disputed legal issues.

“It is the strong public policy of the State of Idaho to forbid all forms of gambling, including casino-style gambling except a state lottery, pari-mutuel betting, and charitable bingo and raffle games. Nothing contained in this act can or should be construed in contravention of said policy.

“Similarly, it is the public policy of the State of Idaho to jealously guard against intrusions upon its inherent right of self-government and state sovereignty. Federal mandates and preemptions of state sovereignty such as those contained within the Indian Gaming Regulatory Act are unacceptable to the State of Idaho. The Legislature does not believe that federal law should mandate additional gambling activities in this State beyond those permitted under State law.

“The issues in dispute identified by the Compact included whether the Indian Gaming Regulatory Act requires the State of Idaho to accept all types of Class III gaming requested by Idaho Indian tribes during the negotiation process prescribed by [25 U.S.C. section 2710\(d\)](#) and also whether permissible subjects of negotiation may include negotiated limits

upon the scale of operations of games authorized under the Indian Gaming Regulatory Act.

“Both the State of Idaho and the Coeur d’Alene Tribe have filed separate complaints in the United States District Court for the District of Idaho seeking resolution of the above issues, including the issue of whether portions of the Indian Gaming Regulatory Act violate the **tenth amendment to the United States Constitution**. The cases: ‘Coeur d’Alene Tribe v. State of Idaho,’ Case No. CIV-92-0437-N-HLR and ‘State of Idaho v. Coeur d’Alene Tribe, et al.,’ Case No. CIV-93-0015-N-HLR, are now consolidated, and the Nez Perce Tribe and the Kootenai Tribe of Idaho have joined in those actions. The Nez Perce Tribe seeks to resolve, in the consolidated cases, the question of whether the state lottery may operate on reservations absent a compact.

“Section 2. Limited Authorization for Resolution of Legal Issues. The State of Idaho consents to resolution of the issues identified above (including **tenth amendment** defenses and the state lottery question) in ‘Coeur d’Alene Tribe v. State of Idaho,’ United States District Court for the District of Idaho Case No. CIV-92-0437-N-HLR and ‘State of Idaho v. Coeur d’Alene Tribe, et al.,’ United States District Court for the District of Idaho Case No. CIV-93-0015-N-HLR, and for this limited purpose, the State will not raise an **eleventh amendment** defense. By this authorization, the State does not consent directly, indirectly, or by implication to resolution of any additional issues in the consolidated cases, nor does the State consent to any separate action in federal court involving the same or other issues.

“Section 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.” Approved April 1, 1993.

Effective Dates.

Section 3 of S.L. 1993, ch. 408 declared an emergency. Approved April 1, 1993.

RESEARCH REFERENCES

ALR. — Preemption of state law by Indian Gaming Regulatory Act. 27
A.L.R. Fed. 2d 93.

§ 67-429B. Authorized tribal video gaming machines. — (1) Indian tribes are authorized to conduct gaming using tribal video gaming machines pursuant to state-tribal gaming compacts which specifically permit their use. A tribal video gaming machine may be used to conduct gaming only by an Indian tribe, is not activated by a handle or lever, does not dispense coins, currency, tokens, or chips, and performs only the following functions:

- (a) Accepts currency or other representative of value to qualify a player to participate in one or more games;
- (b) Dispenses, at the player's request, a cash out ticket that has printed upon it the game identifier and the player's credit balance;
- (c) Shows on a video screen or other electronic display, rather than on a paper ticket, the results of each game played;
- (d) Shows on a video screen or other electronic display, in an area separate from the game results, the player's credit balance;
- (e) Selects randomly, by computer, numbers or symbols to determine game results; and
- (f) Maintains the integrity of the operations of the terminal.

(2) Notwithstanding any other provision of Idaho law, a tribal video gaming machine as described in subsection (1) above is not a slot machine or an electronic or electromechanical imitation or simulation of any form of casino gambling.

History.

I.C., § 67-429B, as added by 2002 Initiative Measure (Proposition 1, § 3).

STATUTORY NOTES

Effective Dates.

Section 5 of the 2002 ballot initiative provides: “Notwithstanding any other provision of Idaho law, this act shall be in full force and effect after

voter approval and immediately upon completion of the canvass of the votes by the Secretary of State. No further action by the executive or legislative branches of state government are required to implement the provisions of this act.” The initiative passed at the November 2002 general election by a vote of 232,986 for and 170,097 against.

CASE NOTES

Constitutionality.

Gaming compact.

Constitutionality.

This section and § 67-429C are constitutional; the decision in *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006), regarding whether video gaming machines were permitted on an Indian reservation, was final and res judicata in any further litigation as to whether tribal video gaming is permissible. *Knox v. State Ex Rel. Otter*, 148 Idaho 324, 223 P.3d 266 (2009).

Gaming Compact.

This section authorizes Indian tribes to conduct gaming using tribal video gaming machines; § 67-429C authorizes tribes to amend their gaming compact to permit the use of tribal video gaming machines. Once a compact is amended, the number of gaming machines must be limited and the tribe must contribute 5% of the net gaming income to local educational programs and schools. *Knox v. United States DOL*, 759 F. Supp. 2d 1223 (D. Idaho 2010).

§ 67-429C. Amendment of state-tribal gaming compacts. — (1) Any tribe with an existing state-tribal gaming compact may amend its compact through the procedure set forth in subsection (2) below to incorporate all of the following terms:

(a) As clarified by this compact amendment, the tribe is permitted to conduct gaming using tribal video gaming machines as described in [Section 67-429B, Idaho Code](#).

(b) In the 10 years following incorporation of this term into its compact, the number of tribal video gaming machines the tribe may possess is limited to the number of tribal video gaming machines possessed by the tribe as of January 1, 2002, plus 25% of that number; provided, however, that no increase in any single year shall exceed 5% of the number possessed as of January 1, 2002. Thereafter, the tribe may operate such additional tribal video gaming machines as are agreed to pursuant to good faith negotiations between the state and the tribe under a prudent business standard.

(c) To the extent such contributions are not already required under the tribe's existing compact, the tribe agrees to contribute 5% of its annual net gaming income for the support of local educational programs and schools on or near the reservation. The tribe may elect to contribute additional sums for these or other educational purposes. Disbursements of these funds shall be at the sole direction of the tribe.

(d) The tribe agrees not to conduct gaming outside of Indian lands.

(2) To amend its compact to incorporate the terms set forth in subsection (1) above, a tribe shall deliver to the Secretary of State a tribal resolution signifying the tribe's acceptance of the terms. Immediately upon delivery of such tribal resolution to the Secretary of State, (a) the tribe's state-tribal gaming compact shall be deemed amended to incorporate the terms; (b) the tribe's compact as so amended shall be deemed approved by the state in accordance with [Section 67-429A, Idaho Code](#), without the need for further signature or action by the executive or legislative branches of state government, and (c) except to the extent federal government approval is

required, the newly incorporated compact terms shall be deemed effective immediately.

(3) Nothing in this section shall be construed to (a) indicate that any gaming activity currently conducted by any tribe is unauthorized or otherwise inappropriate under Idaho law or the tribe's existing compact, or (b) prohibit a tribe from negotiating with the state for an initial compact or a compact amendment regarding tribal video gaming machines or any other matter through a procedure other than the procedure specified in subsection (2) above or which contains terms different than those specified in subsection (1) above.

History.

I.C., § 67-429C, as added by 2002 Initiative Measure (Proposition 1, § 4).

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Effective Dates.

Section 5 of the 2002 ballot initiative provides: "Notwithstanding any other provision of Idaho law, this act shall be in full force and effect after voter approval and immediately upon completion of the canvass of the votes by the Secretary of State. No further action by the executive or legislative branches of state government are required to implement the provisions of this act." The initiative passed at the November 2002 general election by a vote of 232,986 for and 170,097 against.

CASE NOTES

Applicability.

Constitutionality.

Effect of amendment.

Applicability.

In declaratory judgment action, district court properly ruled that Indian tribes could operate tribal video gaming machines without renegotiating their compact to limit the numbers of games and to require payments by the tribes to local education programs and schools. *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006).

Constitutionality.

Section 67-429B and this section are constitutional; the decision in *Idaho v. Shoshone-Bannock Tribes*, 465 F.3d 1095 (9th Cir. 2006), regarding whether video gaming machines were permitted on an Indian reservation, was final and res judicata in any further litigation as to whether tribal video gaming is permissible. *Knox v. State Ex Rel. Otter*, 148 Idaho 324, 223 P.3d 266 (2009).

Effect of Amendment.

Section 67-429B authorizes Indian tribes to conduct gaming using tribal video gaming machines; this section authorizes tribes to amend their gaming compact to permit the use of tribal video gaming machines. Once a compact is amended, the number of gaming machines must be limited and the tribe must contribute 5% of the net gaming income to local educational programs and schools. *Knox v. United States DOL*, 759 F. Supp. 2d 1223 (D. Idaho 2010).

§ 67-429D. Audit of legislative department. — Beginning with the two (2) year period of fiscal years 2013 and 2014 and for each succeeding biennium, the council shall engage the services of a certified public accountant to audit the fiscal affairs of the legislative department. Expenditures for such audit shall be paid out of the legislative account.

History.

I.C., § 67-429D, as added by 2013, ch. 212, § 2, p. 501.

STATUTORY NOTES

Cross References.

Legislative account, § 67-451.

Legislative council, § 67-427.

§ 67-430. Meetings — Quorum — Notice — Report to legislature. —

The council shall meet as often as may be necessary for the proper performance of its duties; provided, however, that it shall meet at least two (2) times each year. Such meetings may be held at various places within the state of Idaho. Eight (8) members shall constitute a quorum and a majority thereof shall have authority to act on any matters within the jurisdiction of the council. All members of the legislature shall be notified in advance of the time, place and general purpose of all meetings and any member of the legislature shall have the right to attend any of the meetings of the council and to present his views on any subject which may be under consideration. The council shall keep minutes of its meetings and make periodic reports to members of the legislature. The council shall assist in making any necessary preparations for all regular and special sessions of the legislature. The services and facilities of the council shall be available to all members of the legislature at all times.

History.

1963, ch. 57, § 4, p. 222; am. 1967, ch. 365, § 4, p. 1054; am. 1996, ch. 159, § 3, p. 502.

§ 67-431. Compensation and expenses. — Members of the council and the committees thereof shall be reimbursed for actual expenses necessarily incurred in attending meetings and in the performance of their official duties in accordance with the rates established by the citizens' committee on legislative compensation as authorized in section 67-406b, Idaho Code.

History.

1963, ch. 57, § 5, p. 222; am. 1967, ch. 223, § 1, p. 674; am. 1967, ch. 365, § 5, p. 1054; am. 1975, ch. 245, § 1, p. 657; am. 2009, ch. 52, § 7, p. 136.

STATUTORY NOTES

Cross References.

Citizens' committee on legislative compensation, § 67-406a.

Amendments.

The 2009 amendment, by ch. 52, rewrote the section, deleting archaic language and providing a correct reference to legislative compensation.

Compiler's Notes.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

Effective Dates.

Section 7 of S.L. 1963, ch. 57 declared an emergency. Approved March 5, 1963.

Section 6 of S.L. 1967, ch. 365 declared an emergency. Approved April 10, 1967.

§ 67-432. Joint finance-appropriations committee — Creation — Members. — There is hereby created the joint finance-appropriations committee which shall consist of the members of the senate finance committee and the members of the house appropriations committee. Vacancies on the committee which occur during the interim when the legislature is not in session shall be filled by the speaker of the house and the president pro tempore of the senate, but any member thus selected shall be from the same house and the same political party as the member whose seat was vacated, and shall serve until the next regular legislative session.

History.

1967, ch. 354, § 1, p. 999; am. 1971, ch. 290, § 1, p. 1104; am. 1973, ch. 151, § 1, p. 292; am. 2003, ch. 252, § 1, p. 652.

§ 67-433. Officers — Adoption of rules of procedure — Subcommittees — Meetings. — The committee shall have the same officers as the senate finance committee and the house appropriations committee and, during the interim when the legislature is not in session, it shall adopt its own rules of procedure. The committee may create such subcommittees, which may include other members of the legislature, as may be necessary for the performance of its duties. The committee shall function during legislative sessions and during the interim between sessions. The committee shall meet as often as may be necessary for the proper performance of its duties upon the call of the cochairs.

History.

1967, ch. 354, § 2, p. 999; am. 1971, ch. 290, § 2, p. 1104; am. 1973, ch. 151, § 2, p. 292; am. 1996, ch. 159, § 4, p. 502.

§ 67-434. Per diem allowance and expenses. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 354, § 3, p. 999, was repealed by S.L. 2009, ch. 52, § 1.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-435. Powers and duties. — (1) The joint finance-appropriations committee shall have the following powers and duties:

(a) To review the executive budget and the budget requests of each state department, agency and institution, including requests for construction of capital improvements, as well as other requests for appropriations submitted to the legislature.

(b) To conduct such hearings as it may deem necessary and proper.

(c) To submit a report to each session of the legislature covering its activities during the preceding period and setting forth its findings and recommendations and to make such recommendations to the appropriate legislative committees as it may deem proper concerning the budget and other proposed legislation.

(d) To perform such other duties as the legislature or legislative council may by appropriate resolution direct.

(2) The joint finance-appropriations committee shall use the following procedures for releasing reports produced by the legislative audits division:

(a) All reports produced by the legislative audits division shall be delivered to the cochair of the joint finance-appropriations committee for their review and approval prior to release;

(b) The cochair of the joint finance-appropriations committee may, at their discretion, conduct hearings relating to any report and seek input and testimony prior to, or after reports are released; and

(c) After such review as deemed necessary and prudent by the cochair of the joint finance-appropriations committee, the cochair shall release the reports produced by the legislative audits division within sixty (60) days of submission to the cochair; except in the event that a report is returned to the legislative audits division for further audit or review, then the cochair shall approve the release of reports within sixty (60) days after the report is resubmitted to the cochair.

History.

1967, ch. 354, § 4, p. 999; am. 1969, ch. 418, § 1, p. 1158; am. 1970, ch. 150, § 1, p. 459; am. 1971, ch. 290, § 3, p. 1104; am. 1973, ch. 151, § 3, p. 292; am. 1993, ch. 327, § 40, p. 1186; am. 1994, ch. 180, § 168, p. 420; am. 2009, ch. 52, § 8, p. 136.

STATUTORY NOTES

Cross References.

Audit function of legislative services office, § 67-702.

Legislative council, § 67-427.

Amendments.

The 2009 amendment, by ch. 52, rewrote the existing provisions of the section within present subsection (1) and added present subsection (2).

Compiler's Notes.

Section 41 of S.L. 1993, ch. 327 read: "All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose."

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

Effective Dates.

Section 4 of S.L. 1971, ch. 290 declared an emergency. Approved March 30, 1971.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state

board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment of this section by § 168 of S.L. 1994, ch. 180, became effective January 2, 1995.

§ 67-436. Vouchers for expenses. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 354, § 5, p. 999; am. 1970, ch. 150, § 2, p. 459; am. 1973, ch. 151, § 4, p. 292; am. 1976, ch. 314, § 3, p. 1080, was repealed by S.L. 2009, ch. 52, § 1.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-437. Departments, agencies, and institutions to submit information. — All departments, agencies and institutions of state government which are required by section 67-3502, Idaho Code, to submit reports of actual and estimated receipts and expenditures to the division of financial management shall submit the same information to the legislative services office for the joint finance-appropriations committee, not later than the deadline prescribed in section 67-3502, Idaho Code.

History.

1967, ch. 354, § 6, p. 999; am. 1999, ch. 37, § 1, p. 74.

STATUTORY NOTES

Cross References.

Audit function of legislative services office, § 67-702.

Division of financial management, § 67-1910.

State budget, § 67-3501 et seq.

§ 67-438. Inquisitorial authority. — In the discharge of any duty herein imposed, the committee shall have the authority to examine and inspect all properties, equipment, facilities, files, records and accounts of any state office, department, institution, board, committee, commission or agency, and to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the district courts.

History.

1967, ch. 354, § 7, p. 999.

§ 67-439. Enforcement of subpoenas. — In case of the failure on the part of any person to comply with any subpoena issued in behalf of the committee, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the district court, on application of the committee, to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

History.

1967, ch. 354, § 8, p. 999.

STATUTORY NOTES

Cross References.

Contempt, § 7-601 et seq.

§ 67-440. Fees and mileage of witnesses. — Each witness who appears before the committee by its order, other than a state official or employee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid upon the presentation of proper vouchers signed by such witness.

History.

1967, ch. 354, § 9, p. 999; am. 1973, ch. 151, § 5, p. 292; am. 1976, ch. 314, § 4, p. 1080.

STATUTORY NOTES

Cross References.

Fees and mileage of witnesses, § 9-1601 et seq.

Compiler's Notes.

Section 10 of S.L. 1967, ch. 354 provided: “The provisions of this act are hereby declared to be severable and if any provisions of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 11 of S.L. 1967, ch. 354 declared an emergency. Approved April 10, 1967.

RESEARCH REFERENCES

ALR. — Allowance of mileage or witness fees with respect to witnesses who were not called to testify or not permitted to do so when called. [22 A.L.R.3d 675](#).

§ 67-441 — 67-450. Legislative auditor — Term — Staff — Duties — Authority — Report to legislature and governor. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1993, ch. 327, § 39, effective July 1, 1993: 67-441. (1970, ch. 85, § 1, p. 208; am. 1973, ch. 151, § 6, p. 292).

67-442. (1970, ch. 85, § 2, p. 208; am. 1973, ch. 151, § 7, p. 292; am. 1991, ch. 314, § 1, p. 822).

67-443. (1970, ch. 85, § 3, p. 208).

67-444. (1970, ch. 85, § 4, p. 208; am. 1973, ch. 151, § 8, p. 292).

67-445. (1970, ch. 85, § 5, p. 208; am. 1973, ch. 151, § 9, p. 292).

67-446. (1970, ch. 85, § 6, p. 208; am. 1973, ch. 151, § 10, p. 292).

67-447. (1970, ch. 85, § 7, p. 208).

67-448. (I.C., § 67-448, as added by 1978, ch. 69, § 1, p. 139).

67-449. (1970, ch. 110, § 2, p. 269; am. 1977, ch. 297, § 1, p. 833; am. 1982, ch. 223, § 1, p. 598; am. 1985, ch. 267, § 1, p. 720).

67-450. (1970, ch. 110, § 3, p. 269).

Another former § 67-448, which comprised S.L. 1970, ch. 110, § 1, p. 269 was repealed by S.L. 1977, ch. 71, § 7.

Section 41 of S.L. 1993, ch. 327 read: “All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative

Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose.”

§ 67-450A. Charges for audit. — The annual appropriation to the office of legislative services from the general fund shall provide for authorized audits and services to general fund departments, agencies, commissions, or institutions without charge to the unit receiving such services. The cost and expenses incurred by the legislative services office in conducting audits or in carrying out other work authorized by law in dedicated funds, shall be paid from the appropriation to the office, department, board, commission, or institution and/or the dedicated funds under the control of the office, department, board, commission, or institution for whom the work is done. The audit fee or costs of work performed in such dedicated fund agencies shall be based on an hourly rate computed by the legislative services office and shall be sufficient to defray all costs and expenses incurred, including but not limited to related salary, travel and office overhead expenses. The legislative services office may require partial payments, during the course of the audit, for services rendered and expenses incurred. All charges shall be paid within thirty (30) days after billing is received.

All moneys received from the various dedicated fund agencies shall be added to the legislative services office's appropriation from the general fund and are hereby appropriated to the legislative services office, providing that the legislative services office's expenditures shall not exceed the amount appropriated by the legislature.

History.

I.C., § 67-450A, as added by 1971, ch. 342, § 1, p. 1334; am. 1993, ch. 327, § 28, p. 1186; am. 1996, ch. 159, § 19, p. 502.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Legislative services office, § 67-701 et seq.

Compiler's Notes.

Section 41 of S.L. 1993, ch. 327 read: “All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose.”

Effective Dates.

Section 2 of S.L. 1971, ch. 342 declared an emergency. Approved March 30, 1971.

CASE NOTES

Decisions Under Prior Law Post-Audit Functions.

Since the territorial controller was authorized to perform all the types of audits which were performed in the territory prior to statehood, the controller was charged with superintending the fiscal concerns of the territory, and the controller was expressly directed to perform certain post-audit functions, the territorial controller would have been authorized to perform a modern post-audit function under [Const., Art. 4, § 1](#), should that function have been in use at the time. Therefore, since the state auditor has implied constitutional powers and duties equivalent to those of the territorial controller, performing the post-audit function is a constitutional duty of the state auditor. [Williams v. State Legislature, 111 Idaho 156, 722 P.2d 465 \(1986\)](#).

§ 67-450B. Independent financial audits of local governmental entities — Filing requirements. — (1) The requirements set forth in this section are minimum audit requirements for all local governmental entities, and include, without limitation, all cities, counties, authorities and districts organized as separate legal and reporting entities under Idaho law, and include the councils, commissions and boards as appointed or elected and charged with fiscal management responsibilities of the local governmental entity.

Audits under these requirements are to be performed by independent auditors in accordance with generally accepted governmental auditing standards, as defined by the United States general accountability office. The auditor shall be employed on written contract.

The entity's governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The entity shall file one (1) copy of each completed audit report with the legislative services office within nine (9) months after the end of the audit period.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) The governing body of a local governmental entity whose annual expenditures from all sources exceed two hundred fifty thousand dollars (\$250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) The governing body of a local governmental entity whose annual expenditures from all sources exceed one hundred fifty thousand dollars (\$150,000), but do not exceed two hundred fifty thousand dollars (\$250,000) in the current year, shall have an annual audit or may elect to have its financial statements audited on a biennial basis. The first year that expenditures exceed one hundred fifty thousand dollars (\$150,000) is the first year of the biennial audit period. The local governmental entity may continue the biennial audit cycle in subsequent years as long as the entity's annual expenditures during the first year of the biennial audit

period do not exceed two hundred fifty thousand dollars (\$250,000). In the event that annual expenditures exceed two hundred fifty thousand dollars (\$250,000) in the current year following a year in which a biennial audit was completed, the local governmental entity shall complete an annual audit. In the event that annual expenditures in the current year do not exceed one hundred fifty thousand dollars (\$150,000) following a year in which an annual or biennial audit was completed, the local governmental entity has no minimum audit requirement.

(c) The governing body of a local governmental entity whose annual expenditures from all sources do not exceed one hundred fifty thousand dollars (\$150,000) has no minimum audit requirements under this section.

(d) Federal audit requirements applicable because of expenditure of federal assistance supersede the minimum audit requirements provided in this section.

History.

I.C., § 67-450B, as added by 1993, ch. 387, § 1, p. 1417; am. 1996, ch. 47, § 1, p. 140; am. 2009, ch. 52, § 9, p. 136; am. 2011, ch. 21, § 1, p. 59; am. 2015, ch. 244, § 40, p. 1008; am. 2019, ch. 203, § 1, p. 622.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

Amendments.

The 2009 amendment, by ch. 52, rewrote the last paragraph in subsection (1), which formerly read: “The entity shall file two (2) copies of each completed audit report with the legislative council within ten (10) days after receiving the audit from the contracting independent auditor”; deleted former subsection (2)(c), which dealt with the authority of a governing body of a local governmental entity to have financial statements reviewed, and made related redesignations; in subsections (2)(a) through (2)(c), substituted “expenditures” or similar language for “budget”; in present subsection (2)(c), substituted “one hundred thousand dollars (\$100,000)”

for “fifty thousand dollars (\$50,000)”; and, in subsection (2)(d), substituted “expenditure” for “receipt.”

The 2011 amendment, by ch. 21, inserted “of local” in the section heading; and rewrote paragraph (2)(b), which formerly read: “The governing body of a local governmental entity whose annual expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial statements audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the entity’s annual expenditures do not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit.”

The 2015 amendment, by ch. 244, substituted “accountability” for “accounting” near the end of the first sentence in the second paragraph in subsection (1).

The 2019 amendment, by ch. 203, in subsection (2), substituted “one hundred fifty thousand dollars (\$150,000)” for “one hundred thousand dollars (\$100,000)” and “governmental entity” for “government entity” throughout paragraphs (b) and (c).

Compiler’s Notes.

For more on the United States general accountability office, referred to in the second paragraph in subsection (1), see <https://www.gao.gov>.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-450C. Independent financial audits of affiliated organizations to state governmental agencies or entities — Filing requirements. — (1) The requirements set forth in this section are minimum audit requirements for all affiliated organizations to state governmental entities, and include, without limitation, all state departments, commissions, institutions, colleges or universities, which are created pursuant to statute or the constitution and which receive an appropriation from the legislature.

As used in this section “affiliated organization” means an organization affiliated with an agency or entity of state government which meets all of the following criteria:

- (a) The organization has separate legal standing, where neither direct association through appointment of a voting majority of the organization’s body nor fiscal dependency exists.
- (b) The affiliation with a specific primary state government agency or entity is set forth in the organization’s articles of incorporation by reference to the name of the primary state government agency or entity in describing the purposes for which the organization was established.
- (c) The affiliation with a specific primary state government agency or entity is set forth in the organization’s application to the internal revenue service for exemption for payment of federal income tax pursuant to the internal revenue code by reference to the name of the primary government in response to any of the questions contained in the exemption application and the organization has been granted that exemption.

Audits under these requirements are to be performed by independent auditors in accordance with generally accepted governmental auditing standards, as defined by the United States general accounting office. The auditor shall be employed on written contract.

The affiliated organization’s governing body shall be required to include in its annual budget all necessary expenses for carrying out the provisions of this section.

The affiliated organization shall file one (1) copy of each completed audit report with the legislative services office within nine (9) months after the end of the audit period.

(2) The minimum requirements for any audit performed under the provisions of this section are:

(a) The governing body of an affiliated organization whose annual expenditures (from all sources) exceeds two hundred fifty thousand dollars (\$250,000) shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) The governing body of an affiliated organization whose annual expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000) may elect to have its financial statements audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the organization's annual expenditures do not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit.

(c) The governing body of an affiliated organization whose annual expenditures (from all sources) do not exceed one hundred thousand dollars (\$100,000) has no minimum audit requirements under this section.

(d) Federal audit requirements applicable because of expenditure of federal assistance supersede the minimum audit requirements provided in this section.

History.

I.C., § 67-450C, as added by 1997, ch. 209, § 1, p. 626; am. 2009, ch. 52, § 10, p. 136.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

Amendments.

The 2009 amendment, by ch. 52, rewrote the last paragraph in subsection (1), which formerly read: “The affiliated organization shall file two (2) copies of each completed audit report with the legislative council within ten (10) days after receiving the audit from the contracting independent auditor”; in subsections (2)(a) and (2)(b), substituted “expenditures” or similar language for “budget”; rewrote subsection (2)(c), dealing with requirements for financial statement review; deleted subsection (2)(d), which read: “The governing body of an affiliated organization whose annual budget (from all sources) does not exceed fifty thousand dollars (\$50,000) has no minimum audit requirements under this section,” and made related redesignations; and in subsection (2)(d), substituted “expenditure” for “receipt.”

Compiler’s Notes.

The United States general accounting office, referred to in the third paragraph in subsection (1), was renamed as the United States general accountability office by the GAO human capital reform act, [P.L. 108-271](#), in 2004. See <https://www.gao.gov>.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-450D. Independent financial audits — Designated entities. — (1) Notwithstanding any other provisions of the Idaho Code relating to audit requirements regarding the entities hereinafter designated, beginning on July 1, 2010, the requirements set forth in this section shall constitute the minimum audit requirements for the following entities:

Alfalfa and clover seed commission;

Idaho apple commission;

Idaho barley commission;

Idaho bean commission;

Idaho beef council;

Idaho cherry commission;

Idaho dairy products commission;

Idaho food quality assurance institute;

Idaho forest products commission;

Idaho grape growers and wine producers commission; Idaho honey commission;

Idaho hop grower's commission;

Idaho mint commission;

Idaho oilseed commission;

Idaho pea and lentil commission;

Idaho potato commission;

Idaho rangeland resource commission;

Idaho wheat commission.

(2) The minimum requirements for any audit performed under the provisions of this section are: (a) Any entity whose annual expenditures (from all sources) exceed two hundred fifty thousand dollars (\$250,000)

shall cause a full and complete audit of its financial statements to be made each fiscal year.

(b) Any entity whose annual expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000), in the current year shall have an annual audit or may elect to have its financial statements audited on a biennial basis. The first year that expenditures exceed one hundred thousand dollars (\$100,000) is the first year of the biennial audit period. The designated entity may continue the biennial audit cycle in subsequent years as long as the entity's annual expenditures during the first year of the biennial audit period do not exceed two hundred fifty thousand dollars (\$250,000). In the event that annual expenditures exceed two hundred fifty thousand dollars (\$250,000) in the current year following a year in which a biennial audit was completed, the designated entity shall complete an annual audit. In the event that annual expenditures in the current year do not exceed one hundred thousand dollars (\$100,000) following a year in which an annual or biennial audit was completed, the designated entity has no minimum audit requirement.

(c) Any entity whose annual expenditures (from all sources) do not exceed one hundred thousand dollars (\$100,000) has no minimum audit requirements under the provisions of this section.

(d) Federal audit requirements applicable because of expenditure of federal assistance supersede the minimum audit requirements provided in this section.

(3) All moneys received or expended by the entities identified in subsection (1) of this section shall be audited as specified in subsection (2) of this section by a certified public accountant designated by the entity, who shall furnish a copy of such audit to the director of the legislative services office and to the senate agricultural affairs committee and the house of representatives agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the commission's fiscal year.

(4) Any entity identified in subsection (1) of this section that is not audited pursuant to the provisions of this section shall submit an unaudited annual statement of revenues, expenditures and fund balances to the director of the legislative services office, to the senate agricultural affairs

committee and the house of representatives agricultural affairs committee, to the state controller and to the division of financial management.

(5) The right is reserved to the state of Idaho to audit the funds of the entities identified in this section at any time.

History.

I.C., § 67-450D, as added by 2010, ch. 178, § 1, p. 366; am. 2011, ch. 21, § 2, p. 59; am. 2015, ch. 124, § 8, p. 312; am. 2016, ch. 19, § 2, p. 24; am. 2016, ch. 85, § 2, p. 269; am. 2017, ch. 130, § 2, p. 304.

STATUTORY NOTES

Cross References.

Alfalfa and clover seed commission, § 22-4204.

Division of financial management, § 67-1910.

Idaho apple commission, § 22-3602.

Idaho barley commission, § 22-4002.

Idaho bean commission, § 22-2912.

Idaho beef council, § 25-2901.

Idaho cherry commission, § 22-3702.

Idaho dairy products commission, § 25-3102.

Idaho food quality assurance institute, § 67-8301 et seq.

Idaho forest products commission, § 38-1501 et seq.

Idaho grape growers and wine producers commission, § 54-3601 et seq.

Idaho honey commission, § 22-2804.

Idaho hop grower's commission, § 22-3104.

Idaho mint commission, § 22-3804.

Idaho oilseed commission, § 22-4704.

Idaho pea and lentil commission, § 22-3502.

Idaho potato commission, § 22-1201 et seq.

Idaho rangeland resources commission, § 58-1401 et seq.

Idaho state soil and water conservation commission, § 22-2718.

Idaho wheat commission, § 22-3302.

Legislative services office, § 67-701 et seq.

State controller, § 67-1001 et seq.

Amendments.

The 2011 amendment, by ch. 21, substituted “Soil and water conservation commission” for “Soil conservation commission” in the list of commissions in subsection (1), and rewrote subsection (2)(b), which formerly read: “Any entity whose annual expenditures (from all sources) exceed one hundred thousand dollars (\$100,000), but do not exceed two hundred fifty thousand dollars (\$250,000), may elect to have its financial statements audited on a biennial basis and may continue biennial auditing cycles in subsequent years as long as the entity’s annual expenditures do not exceed two hundred fifty thousand dollars (\$250,000) during either year of any biennial period. Biennial audits shall include an audit of each fiscal year since the previous audit.”

The 2015 amendment, by ch. 124, substituted “Idaho honey commission” for “Idaho honey advertising commission” in subsection (1).

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 19, deleted “Commission on pesticide management” from the listing in subsection (1).

The 2016 amendment, by ch. 85, deleted “Idaho aquaculture commission” from the listing in subsection (1).

The 2017 amendment, by ch. 130, deleted the former next-to-last listing entry from subsection (1), which read: “Soil and water conservation commission”.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 10 of S.L. 2015, ch. 124 declared an emergency. Approved March 26, 2015.

Section 3 of S.L. 2017, ch. 130 declared an emergency and made this section effective retroactive to July 1, 2012. Approved March 24, 2017.

§ 67-450E. Local governing entities central registry — Reporting information required — Penalties for failure to report. — In addition to the provisions applicable to local governing entities found in section 67-450B, Idaho Code, the provisions of this section shall also apply to local governing entities. For purposes of this section, “local governing entity” shall have the same meaning as provided in section 67-450B, Idaho Code. The term local governing entity shall also include entities governed by chapter 20, title 50, Idaho Code. If a local governing entity is governed by the provisions of section 33-701, Idaho Code, such entity shall not be required to comply with the provisions of this section.

(1)(a) There is hereby established a central registry and reporting portal (“registry”) on the legislative services office website. The registry and reporting portal shall serve as the unified location for the reporting of and access to administrative and financial information of local governing entities in this state. To establish a complete list of all local governmental entities operating in Idaho, on the effective date of this legislation and so that the registry established will be comprehensive, every existing local governing entity shall register with the state registry. For calendar year 2015, the submission of information required by subsection (2) of this section shall occur prior to March 1, 2015, and shall be in the form and format required by the legislative services office. In addition to the information required by this section for the March 1, 2015, filing deadline, the entity shall report the date of its last independent audit. The registry listing will be available on the legislative services office website by January 1, 2016.

(b) The county clerk shall notify each local governing entity of the requirements of this section.

(c) After March 1, 2015, and on or before December 1 of each year:

- (i) The state tax commission shall submit a list to the legislative services office of all taxing districts within the state; and
- (ii) The county clerk of each county shall submit a list to the legislative services office of all taxing districts in the county and any other local

governing entities that are authorized to impose fees, assessments or receive property tax money within the county.

(2) On or before December 1 of each year, every local governing entity shall submit to the online central registry and reporting portal the following information:

(a) Administrative information:

- (i) The terms of membership and appointing authority for the governing board member of the local governmental entity;
- (ii) The official name, mailing address and electronic mailing address of the entity;
- (iii) The fiscal year of the entity;
- (iv) Except for cities and counties, the section of Idaho Code under which the entity was established, the date of establishment, the establishing entity and the statute or statutes under which the entity operates, if different from the statute or statutes under which the entity was established.

(b) Financial information:

- (i) The most recent adopted budget of the entity; and
- (ii) An unaudited comparison of the budget to actual revenues and expenditures for the most recently completed fiscal year.

(c) Bonds or other debt obligation information:

- (i) The cumulative dollar amount of all bonds or other debt obligations issued or incurred by the entity; and
- (ii) The average length of term of all bond issuances or other debt obligations and the average interest rate of all bonds or other debt obligations.

(d) Within five (5) days of submitting to the central registry the information required by this subsection, the local governing entity shall notify the entity's appointing authority, if the entity has an appointing authority, that it has submitted such information.

(e) If any information provided by an entity as required by this subsection changes during the year, the entity shall update its information on the registry within thirty (30) days of any such change.

(f) All reasonable fees, costs and other expenses incurred assisting local governing entities in compiling the reporting information required by this section may be charged by the county against the local governing entity requesting the county's service. An entity may request assistance from the county to comply with provisions of this section but the county is under no obligation to provide such assistance. For purposes of this section, reasonable fees and costs shall include, but not be limited to, the labor costs, material costs and copying costs incurred while assisting local governing entities to comply with this section. Such fees and costs may be deducted from any distributions of taxes, fees or assessments collected by the county on behalf of the local governing entity.

(3) Audits required by [section 67-450B, Idaho Code](#), will be submitted to the online portal.

(4) Notification and penalties.

(a) If a local governing entity fails to submit information required by this section or submits noncompliant information required by this section, the legislative services office shall notify the entity immediately after the due date of the information that either the information was not submitted in a timely manner or the information submitted was noncompliant. The local governing entity shall then have thirty (30) days from the date of notice to submit the information or notify the legislative services office that it will comply by a time certain.

(b) No later than September 1 of any year, the legislative services office shall notify the appropriate board of county commissioners and the state tax commission of the entity's failure to comply with the provisions of this section. Upon receipt of such notification, the board of county commissioners shall place a public notice in a newspaper of general circulation in the county indicating that the entity is noncompliant with the legal reporting requirements of this section. The county commissioners shall assess to the entity the cost of the public notice. Such costs may be deducted from any distributions of taxes, fees or assessments collected by the county on behalf of the local governing

entity. For any noncomplying entity, the legislative services office shall notify the board of county commissioners and the state tax commission of the compliance status of such entity by September 1 of each year until the entity is in compliance.

(c) A local governing entity that fails to comply with this section shall be prohibited from including in its budget any budget increase otherwise permitted by either subsection (1)(a) or (e) of [section 63-802, Idaho Code](#).

(d) In addition to any other penalty provided in this section, in any failure to comply with this section, the state tax commission shall withhold the annual distribution of sales tax distribution pursuant to [section 63-3638\(10\), Idaho Code](#), for any noncomplying entity. The state tax commission shall withhold and retain such money in a reserve account until the legislative services office certifies that the entity has complied with the provisions of this section, at which point the state tax commission shall pay any money owed to the local governing entity previously in violation of this section.

(e) For any local governing entity that is a non-taxing district, including entities established pursuant to title 50, Idaho Code, upon notification to the board of county commissioners from the legislative services office of noncompliance by such entity, the board of county commissioners shall convene to determine appropriate compliance measures including, but not limited to, the following:

(i) Require a meeting of the board of county commissioners and the entity's governing body wherein the board of county commissioners shall require compliance of this section by the entity;

(ii) Assess a noncompliance fee on the noncomplying entity. Such fee shall not exceed five thousand dollars (\$5,000). Such fees and costs may be deducted from any distributions of taxes, fees or assessments collected by the county on behalf of the local governing entity. The amount of any such fee shall not be passed on to persons subject to the jurisdiction of the entity in the form of adjustments to any fee or assessment imposed or collected by the entity. Any fee collected shall be deposited into the county's current expense fund;

(iii) Cause a special audit to be conducted on the entity at the cost of the entity.

(5) The provisions of this section shall have no impact or effect upon reporting requirements for local governing entities relating to the state tax commission.

History.

I.C., § 67-450E, as added by 2014, ch. 249, § 1, p. 626.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

State tax commission, § 63-101 et seq.

Compiler's Notes.

The phrase “the effective date of this legislation” in paragraph (1)(a) refers to the effective date of S.L. 2014, Chapter 249, which was effective January 1, 2015.

The word enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2014, ch. 249 provided that the act should take effect on and after January 1, 2015.

§ 67-451. Legislative account created — Duties of controller — Disbursements from account — Report of disbursements. — (1) There is hereby created in the state treasury the legislative account. The legislative account shall consist of such moneys as are placed into it by other appropriations, by receipts paid into the legislative account, and the moneys appropriated and transferred into it according to the provisions of this act.

(2) There is hereby appropriated out of the general fund and transferred into the legislative account, and commencing January 1, 2008, the state controller is authorized and directed to make such transfers in the amounts shown on each of the following dates in each year:

January 1 \$1,825,000

March 1 \$1,825,000

June 1 \$1,445,000

September 1 \$1,660,000

(3) The president pro tempore of the senate and the speaker of the house of representatives are hereby authorized to make expenditures out of the legislative account for any necessary expenses of the legislature and the legislative account is hereby perpetually appropriated for any necessary expenses of the legislature. Necessary expenses of the legislature shall include, but are not necessarily limited to, salaries and wages of officers, members, and employees of the legislature, consultants and other expert or professional personnel, travel expenses of officers, members, and employees of the legislature, other current expenses incurred in any operation or function of the legislature, premiums for life, accidental death and dismemberment, hospital, medical, surgical and major medical insurance for members of the legislature during their terms of office, and for employees of the legislature during the period of their employment, and capital outlay items necessary for any operation or function of the legislature. The signature of the president pro tempore of the senate or the speaker of the house of representatives on any voucher or claim for payment shall be sufficient authority for the state controller to pay the same. Expenses for any interim activity of the legislature or legislators shall be

paid in the same manner. Expenses for any interim legislative committees shall be paid in the same manner, if previously authorized by concurrent resolution.

(4) The state controller is hereby directed to devise and implement a financial reporting and control system for the purposes of this act that exempts legislative expenditures from any other provision of law, and the legislative account shall be specifically exempt from the provisions of chapter 35, title 67, Idaho Code, and shall be specifically exempt from the provisions of chapter 36, title 67, Idaho Code. Such system must produce a report as of the end of each calendar month that clearly shows additions to the account, the unexpended balance in the account, the expenditures to date, and the expenditures for the month reported, suitably detailed in such manner as the presiding officers may instruct the state controller. A copy of such report must be delivered to the president pro tempore of the senate and the speaker of the house of representatives and to the governor by no later than the fifth working day of the following month.

History.

I.C., § 67-451, as added by 1971, ch. 205, § 2, p. 896; am. 1974, ch. 239, § 1, p. 1601; am. 1977, ch. 27, § 1, p. 49; am. 1978, ch. 278, § 1, p. 675; am. 1980, ch. 392, § 1, p. 996; am. 1985, ch. 1, § 1, p. 3; am. 1988, ch. 145, § 1, p. 265; am. 1989, ch. 392, § 1, p. 972; am. 1989, ch. 393, § 1, p. 975; am. 1991, ch. 58, § 1, p. 111; am. 1993, ch. 393, § 1, p. 1456; am. 1994, ch. 180, § 169, p. 420; am. 2000, ch. 373, § 1, p. 1232; am. 2001, ch. 305, § 1, p. 1111; am. 2007, ch. 273, § 1, p. 800.

STATUTORY NOTES

Cross References.

State controller, § 67-1001.

Amendments.

The 2007 amendment, by ch. 273, in subsection (2), substituted “January 1, 2008” for “June 1, 2001,” and increased the dollar amounts of transfers from the general fund into the legislative account.

Compiler’s Notes.

The term “this act” in subsections (1) and (4) refers to S.L. 1971, Chapter 205, which is compiled as this section.

Section 1 of S.L. 1971, ch. 205 read: “Because of the nature of legislative operations and the time periods in which legislative sessions and legislative functions are performed, it is necessary to exempt such sessions and functions from the ordinary fiscal operations applicable to other operations of state government. The legislature has unique constitutional duties and responsibilities that do not lend themselves well to the fiscal time periods and operations schedules established for other operations of state government. For these reasons, it is necessary to adopt the provisions contained in this act.”

Effective Dates.

Section 4 of S.L. 1971, ch. 205 declared an emergency. Approved March 24, 1971.

Section 2 of S.L. 1974, ch. 239 declared an emergency. Approved April 3, 1974.

Section 2 of S.L. 1980, ch. 392 declared an emergency and stated that the act should be in full force and effect on and after its passage and approval and retroactively to February 1, 1980. Approved April 10, 1980.

Section 2 of S.L. 1985, ch. 1 declared an emergency and provided that the act should be in full force and effect on and after passage and approval retroactive to January 1, 1985. Approved January 24, 1985.

Section 4 of S.L. 1989, ch. 392 read, “(1) An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after June 1, 1989.

“(2) Section 2 of this act shall be in full force and effect on and after June 1, 1992.

“(3) Section 3 of this act shall be in full force and effect on and after July 1, 1989.” Approved April 7, 1989.

Section 2 of S.L. 1989, ch. 393 declared an emergency. Approved April 7, 1989.

Section 5 of S.L. 1991, ch. 58 read: “(1) An emergency existing therefor, which emergency is hereby declared to exist, Sections 1, 2 and 3 of this act shall be in full force and effect on and after March 1, 1991.

“(2) Section 4 of this act shall be in full force and effect on and after July 1, 1991, and only upon passage and approval of House Bill No. 216, First Regular Session, Fifty-first Legislature.” Approved March 21, 1991. However, since House Bill 216 did not pass § 4 of S.L. 1991, ch. 58 did not take effect.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment of this section by S.L. 1994, ch. 180, became effective January 2, 1995.

Section 2 of S.L. 2007, ch. 273 provided that the act should take effect on and after January 1, 2008.

§ 67-451A. Legislative legal defense fund created. — There is hereby created in the state treasury the legislative legal defense fund. The legislative legal defense fund shall consist of such moneys as are placed into it by appropriations and shall be continuously appropriated to the senate and house of representatives. The legislative legal defense fund shall be specifically exempt from the provisions of chapter 35, title 67, Idaho Code, and from the provisions of chapter 36, title 67, Idaho Code. The president pro tempore of the senate and the speaker of the house of representatives are hereby authorized to make expenditures out of the fund for any necessary legal expenses of the legislature.

History.

I.C., § 67-451A, as added by 2012, ch. 335, § 1, p. 929.

§ 67-452. Membership in Pacific Fisheries Legislative Task Force. —

The legislative council, joining with the presiding officers of other jurisdictions, shall appoint, respectively two (2) senators, one (1) from the majority party and one (1) from the minority party, and two (2) members of the house of representatives, one (1) from the majority party and one (1) from the minority party, to represent Idaho on the Pacific Fisheries Legislative Task Force, which shall operate as a clearinghouse for opinion from the various interests involved in pacific fishing, and which shall include among its duties the duty to report to the legislatures of the participating jurisdictions and to the state delegations in the United States congress concerning means of protecting and fostering fishing in the participating jurisdictions. Actual and necessary expenses and per diem shall be allowed as provided by the legislative council, and shall be paid from legislative funds.

History.

I.C., § 67-452, as added by 1986, ch. 50, § 2, p. 144.

STATUTORY NOTES

Cross References.

Legislative council, § 67-427.

Prior Laws.

A former § 67-452, which comprised I.C., [§ 67-452] § 67-451, as added by 1971, ch. 271, § 1, p. 1077 was repealed by S.L. 1976, ch. 286, § 4.

Legislative Intent.

Section 1 of S.L. 1986, ch. 50 read: “The legislature of the state of Idaho finds that fishing off the Pacific coast plays an indirect yet vital role in enhancing or depleting the fisheries of the state of Idaho. The legislature further finds that there is an obvious need for developing means to protect the Pacific coast fisheries for the benefit of the future of Idaho citizens and that this subject is one that requires interstate cooperation.”

Compiler's Notes.

The Pacific fisheries legislative task force, a group which meet to discuss common fisheries issues, is composed of representatives from California, Washington, Oregon, Alaska, and Idaho.

§ 67-453. Statements regarding proposed constitutional amendments.

— (1) Whenever the legislature shall have directed the submission of a proposal to amend the constitution of the state of Idaho to the electors, the legislative council shall, not less than one hundred twenty (120) days prior to the date of the election at which the proposed amendment will be submitted to the people, prepare and file with the secretary of state a dossier containing the following:

(a) A brief statement setting forth in simple, understandable language the meaning and purpose of the proposed amendment and the result to be accomplished by such amendment. The statement shall be included in the publications of the proposed amendment required by law of the secretary of state, and shall be printed on the official ballot by which such proposed amendment is submitted to the electors; and (b) A concise presentation of the major arguments advanced by the proponents and opponents of the proposed amendment designed to represent as fairly as possible the arguments relative to the proposed amendment. In preparing such arguments, the legislative council may seek the advice and suggestions of known supporters and opponents or any other persons or groups and may, in its sole discretion, use any of the suggested arguments. If any such suggestions are utilized by the legislative council, no recognition shall be given to the persons or groups which submitted the argument. The arguments shall be published in the publications required by law of the secretary of state, but shall not appear on the ballot by which such proposed amendment is submitted to the electors.

(2) The secretary of state shall cause to be printed in either the voters' pamphlet pursuant to [section 34-1812C, Idaho Code](#), or in a pamphlet similar to the voters' pamphlet, the arguments prepared pursuant to subsection (1) of this section and the question that will be on the general election ballot.

History.

[I.C., § 67-453](#), as added by 1976, ch. 235, § 1, p. 827; am. 2007, ch. 201, § 1, p. 618.

STATUTORY NOTES

Cross References.

Legislative council, § 67-427.

Secretary of state, duties regarding proposed amendments, § 67-913.

Amendments.

The 2007 amendment, by ch. 201, redesignated the introductory paragraph as subsection (1) and former subsections (1) and (2) as (1)(a) and (1)(b); and added subsection (2).

CASE NOTES

Cure of procedural defects.

Statement of meaning and purpose.

Cure of Procedural Defects.

Where the materials published concerning proposed constitutional amendments sufficiently set forth the purpose and effect of the amendments to inform the public of the content, the statements of meaning and purpose sufficiently described the effect and impact of the proposed amendments, and the statements for and against them adequately reflected the principal arguments espoused by proponents and opponents, alleged procedural defects were cured by the election, and statutory and constitutional challenges were time barred because they were not presented prior to the election. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 55, 982 P.2d 358 (1999).

Statement of Meaning and Purpose.

Where statement of meaning and purpose of proposed constitutional amendment clearly explained a prohibition of gambling in Idaho, the fact that Indian gaming was not specifically named did not mean the voters had been misled; thus, the statement of purpose and meaning met the requirements of Idaho Const., Art. XX, § 1. *Nez Perce Tribe v. Cenarrusa*, 125 Idaho 37, 867 P.2d 911 (1993).

Decisions Under Prior Law Constitutionality.

Legislature could not by enactment of former similar section modify Idaho Const., Art. XX, §§ 1 and 2, as to the requirements for the submission of a proposed constitutional amendment to the electorate; however, the constitution being a limitation and not a grant of legislative power, it is competent for legislature to adopt additional requirements designed to secure vote on proposed amendment by an informed electorate and to avoid possible uncertainty. *Penrod v. Crowley*, 82 Idaho 511, 356 P.2d 73 (1960).

§ 67-454. Subcommittees for review of administrative rules — Meetings regarding rules. — For the purposes of review of proposed administrative rules pursuant to chapter 52, title 67, Idaho Code, germane joint subcommittees are hereby authorized and created. The speaker of the house of representatives and the president pro tempore of the senate shall designate a subcommittee of each germane committee of each house for the consideration of proposed rules of the respective state agencies. The respective germane subcommittee of each house thus designated shall meet with the germane subcommittee of the other house and shall constitute the germane joint subcommittee. A subcommittee of each standing committee of each house shall be composed of the chairman of the committee, one (1) member of the majority party from the committee, appointed by the president pro tempore in the case of senate members, and by the speaker in the case of house members, and one (1) member of the minority party from the committee, appointed by the minority leader of the senate in the case of senate members, and by the minority leader of the house in the case of house members. If vacancies occur or exist in the majority party membership of the subcommittees of the senate, the president pro tempore shall appoint a replacement member; if vacancies occur or exist in the minority party membership of the subcommittees of the senate, the minority leader shall appoint a replacement member. If vacancies occur or exist in the majority party membership of the subcommittees of the house, the speaker shall appoint a replacement member; if vacancies occur or exist in the minority party membership of the subcommittees of the house, the minority leader shall appoint a replacement member. Meetings of a joint germane subcommittee shall be governed by the joint rules of the legislature; the chairmen shall sit as cochairmen.

Upon notice of intended action as provided in sections 67-5221 and 67-5223, Idaho Code, and transmission of analysis from the director of legislative services, the subcommittees may hold a meeting, which shall be held within forty-two (42) days of receipt of the analysis. A meeting may be called by the cochairmen or by two (2) or more members of the subcommittees giving oral or written notice to the legislative services office within fourteen (14) days of receipt of the analysis from the legislative

services office. Upon a finding of the same objection by a majority of the members of the subcommittee of each house voting separately, an objection to a rule shall be transmitted to the agency with a concise statement of the reasons for the objection. A report of the joint subcommittee on each rule transmitted to it, including a finding that there is no objection to the rule or that an objection has been filed, shall be filed with the agency, transmitted to the membership of the germane standing committees, and submitted to the next regular session of the legislature.

History.

I.C., § 67-454, as added by 1978, ch. 255, § 3, p. 556; am. 1983, ch. 197, § 1, p. 536; am. 1993, ch. 216, § 97, p. 587; am. 1996, ch. 159, § 5, p. 502; am. 1999, ch. 21, § 1, p. 29.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

Effective Dates.

Section 4 of S.L. 1999, ch. 21 declared an emergency. Approved February 19, 1999.

§ 67-455. Governor's housing committee — Governor's residence fund. — (1) There is hereby created the governor's housing committee consisting of five (5) appointed members. The following public officials shall each appoint one (1) member to serve on the committee: the president pro tempore of the senate, the speaker of the house of representatives, the minority leader of the senate and the minority leader of the house of representatives and the director of the department of administration. Members of the committee shall serve at the pleasure of the appointing public official or his successor.

(2) There is hereby created the governor's residence fund. All moneys in or added to the governor's residence fund and any dividend or interest earnings thereon are hereby perpetually appropriated to the department of administration and set apart for the purposes of providing a governor's housing allowance and the acquisition, construction, remodel, furnishing, equipping or maintenance of a governor's residence and the same shall be available for such purposes immediately upon being credited to the account, upon authorization for expenditure being given by the governor's housing committee. Upon the direction of the committee, the department shall use moneys in the account for any purpose related to a governor's housing allowance or the acquisition, construction, remodel, furnishing, equipping or maintenance of a governor's residence. The net proceeds from any sale or rental of a governor's residence, or any property related thereto, and of any cash or cash-equivalent donation made to the committee, shall be returned to the governor's residence fund.

History.

I.C., § 67-455, as added by 1996, ch. 160, § 2, p. 528; am. 1999, ch. 336, § 1, p. 912.

STATUTORY NOTES

Cross References.

Director of department of administration, § 67-5701.

Prior Laws.

Former § 67-455, which comprised **I.C., § 67-455**, as added by 1986, ch. 123, § 1, p. 324; am. 1987, ch. 311, § 1, p. 653; am. 1990, ch. 160, § 1, p. 349; am. 1991, ch. 65, § 1, p. 158, was repealed by S.L. 1995, ch. 208, § 1, effective July 1, 1995.

Effective Dates.

Section 5 of S.L. 1999, ch. 336 declared an emergency. Approved March 24, 1999.

§ 67-455A. Committee may acquire and dispose of property. — (1)

The governor's housing committee may accept grants, gifts or donations of any kind from any private or public source related to the acquisition, construction, remodel, furnishing, equipping or maintenance of a governor's residence.

(2) The governor's housing committee may acquire real property for purposes related to a governor's residence. Any real property acquired by the governor's housing committee shall be titled in the name of the state of Idaho for the benefit of the governor's housing committee and shall be administered by the department of administration on behalf of and for the benefit of the governor's housing committee. The governor's housing committee may sell such real property by public, private or negotiated sale, exchange, donation or by any other means and may rent a governor's residence and any furnishings and equipment related thereto, as the committee may deem appropriate and prudent. Any real property acquired hereunder shall not be subject to [sections 58-331 through 58-335, Idaho Code](#), relating to surplus real property as the same may now exist or as the same may be amended from time to time. Any sale or disposal of such real property shall not require the reservation to the state of mineral or other rights in the real property.

(3) The governor's housing committee may acquire personal property for the purpose of remodeling, furnishing, equipping or maintaining a governor's residence. Any personal property acquired by the governor's housing committee shall be the property of the state of Idaho held for the benefit of the governor's housing committee and shall be administered on behalf of the governor's housing committee by the department of administration. The governor's housing committee may dispose of any personal property acquired hereunder by any means as the committee may deem appropriate and prudent and such disposal shall not be subject to [section 67-5732A, Idaho Code](#), relating to surplus personal property, as the same exists or may be amended from time to time.

(4) The governor's housing committee may acquire and contract for services related to the acquisition, construction, remodel, furnishing,

equipping or maintenance of a governor's residence. Notwithstanding any other law to the contrary, the acquisition, construction, remodel, furnishing, equipping or maintenance of a governor's residence shall not be considered public works and shall not be subject to any laws related to public works of the state of Idaho. Notwithstanding any other law to the contrary, the governor's housing committee shall not be subject to the state procurement act provided in chapter 92, title 67, Idaho Code.

(5) Notwithstanding the provisions of sections 18-1359(1)(d), 18-2705, 58-112, 74-501, 74-503 and 67-9230, Idaho Code, or any other provision of law, an incumbent governor shall not be deemed prohibited from purchasing real or personal property acquired hereunder, and any such purchase shall be valid for all purposes. Insofar as the provisions of this section are inconsistent with the provisions of any other law, general, specific or local, the provisions of this section shall be controlling.

(6) This section shall apply to all real and personal property acquired pursuant to this section or [section 67-455, Idaho Code](#), before or after the effective date of this section.

History.

[I.C., § 67-455A](#), as added by 1999, ch. 336, § 2, p. 912; am. 2015, ch. 141, § 165, p. 379; am. 2016, ch. 289, § 14, p. 793.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “74-501, 74-503” for “59-201, 59-202” in subsection (5).

The 2016 amendment, by ch. 289, at the end of subsection (4), substituted “state procurement act provided in chapter 92, title 67” for “purchasing laws for state agencies provided in chapter 57, title 67”; and substituted “67-9230” for “67-5726” near the beginning of subsection (5).

Compiler's Notes.

The phrase “the effective date of this section” at the end of subsection (6) refers to the effective date of S.L. 1999, ch. 336, § 2, which was effective March 24, 1999.

Effective Dates.

Section 5 of S.L. 1999, ch. 336 declared an emergency. Approved March 24, 1999.

§ 67-456. Special committee on criminal justice reinvestment oversight. — (1) In order to maintain continuous oversight of the Idaho criminal justice reinvestment initiative and related issues, there is hereby established a special legislative committee on justice reinvestment oversight.

(2) The committee shall consist of five (5) members of the senate, one (1) of whom shall be the chairperson of the senate judiciary and rules committee, two (2) from the majority party appointed by the president pro tempore of the senate and two (2) from the minority party appointed by the minority leader, and five (5) members of the house of representatives, one (1) of whom shall be the chairperson of the house judiciary, rules and administration committee, two (2) from the majority party appointed by the speaker of the house and two (2) from the minority party appointed by the minority leader. The cochair of the special committee shall be the chairperson of the senate judiciary and rules committee and the chairperson of the house judiciary, rules and administration committee. Appointments to the committee shall be for the term of office of the member appointed. Any vacancy shall be filled in a manner consistent with the appointment procedure set forth in this subsection, except the appointment shall be for the remainder of the unexpired term. A committee member may be reappointed to the committee.

(3) The cochair may appoint advisors with expertise in Idaho's criminal justice system and are expected to receive input and technical assistance from the council of state governments justice center. Any advisors to the committee who are not legislative members shall not be reimbursed from legislative funds for per diem, mileage or other expenses and shall not have voting privileges.

(4) The committee shall have as a primary duty and responsibility the task of monitoring, studying and guiding analysis and policy development in all aspects of the criminal justice system in Idaho including, but not limited to, monitoring performance and outcome measures as set forth in the justice reinvestment act and studying the data-driven justice reinvestment and resource allocation approach and policies to improve

public safety, reduce recidivism and reduce spending on corrections in Idaho.

(5) By no later than February 1 of each year, the committee shall report to the legislature on its activities and findings and may report and make recommendations on any aspect of the Idaho criminal justice system in this state at any time.

(6) Members of the committee shall be compensated from the legislative account on order of the president pro tempore of the senate or the speaker of the house of representatives at the rates applicable for committee members of the legislative council.

(7) The special committee shall cease to exist following its report to the first regular session of the sixty-seventh Idaho legislature in 2023.

History.

I.C., § 67-456, as added by 2014, ch. 290, § 2, p. 733; am. 2019, ch. 254, § 1, p. 761.

STATUTORY NOTES

Cross References.

Legislative council, § 67-427 et seq.

Legislative account, § 67-451.

Prior Laws.

Former § 67-456, Special committee on health care, which comprised I.C., § 67-456, as added by 1989, ch. 297, § 1, p. 729, was repealed by S.L. 2014, ch. 290, § 1, effective July 1, 2014.

Amendments.

The 2019 amendment, by ch. 254, substituted “sixty-seventh Idaho legislature in 2023” for “sixty-fifth Idaho legislature in 2019” in subsection (7).

Compiler’s Notes.

For further information on the council of state governments justice center, referred to in subsection (3), see <https://csgjusticecenter.org>.

The justice reinvestment act, referred to in subsection (4), is S.L. 2014, Chapter 150, which is compiled as §§ 19-2513, 19-2517 19-2521, 19-2524, 19-2601, 19-2606, 20-209H, 20-210A, 20-216, 20-219, 20-221 to 20-224, 20-227, 20-228, 20-229A, 20-229B, 20-233, and 20-250.

§ 67-457. Joint legislative oversight committee — Creation. — There is hereby created the joint legislative oversight committee which shall be appointed as follows: the president pro tempore of the senate shall appoint majority party members of the senate, the senate minority leader shall appoint minority party members of the senate, the speaker of the house of representatives shall appoint majority party members of the house of representatives and the minority leader of the house of representatives shall appoint minority party members of the house of representatives. Membership on the committee shall be evenly divided between the house of representatives and the senate and shall be evenly divided between the two (2) largest political parties represented in the legislature. The cochairmen of the joint finance-appropriations committee, or their designees, shall be members of the joint legislative oversight committee. The joint legislative oversight committee is hereby created under the jurisdiction of the legislative council for the purpose of conducting performance audits or evaluations, and reviewing all records related thereto, of any state agency at any time as the committee deems necessary. The legislative council shall appoint cochairmen who shall be from different houses of the legislature and who shall be from different political parties and shall determine the size of the committee. The legislative council, by a seventy-five percent (75%) vote, shall appoint a director of legislative performance evaluations for the purpose of conducting performance audits or evaluations pursuant to sections 67-457 through 67-464, Idaho Code. The director of legislative performance evaluations shall serve at the pleasure of the joint legislative oversight committee. The legislative council shall initially establish the compensation of the director of legislative performance evaluations and thereafter the compensation of the director of legislative performance evaluations shall be established by the joint legislative oversight committee.

History.

I.C., § 67-457, as added by 1993, ch. 327, § 3, p. 1186; am. 1996, ch. 65, § 1, p. 188.

STATUTORY NOTES

Cross References.

Legislative council, § 67-427.

Legislative Intent.

Section 1 of S.L. 1993, ch. 327 read: “The purpose of this act is to modernize the provision of professional staff services to the legislature, to provide a performance evaluation function within the legislative branch of government, to provide legislative committees and legislators with professional staff support, to increase communication and efficiency and enhance productivity within the legislative branch of government of this state.”

Compiler’s Notes.

Section 41 of S.L. 1993, ch. 327 read: “All employees employed by the Joint Senate Finance-House Appropriations Committee, the Legislative Auditor or Legislative Budget Office on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be employees of the Legislative Council on July 1, 1993. All moneys which have been appropriated to and been encumbered by the Joint Senate Finance-House Appropriations Committee, the Legislative Budget Office and the Legislative Auditor on June 30, 1993, shall be transferred to the Legislative Council and shall be deemed to be encumbered by that body. All moneys appropriated to the Joint Senate Finance-House Appropriations Committee for the Legislative Auditor and the Legislative Budget Office are deemed appropriated to the Legislative Council for the same period and purpose.”

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-458. Definitions. — For the purposes of sections 67-457 through 67-464, Idaho Code:

(1) “Committee” means the joint legislative oversight committee.

(2) “Performance audit or evaluation” shall mean an examination of the effectiveness of the administration, the efficiency and the adequacy of such administration in terms of the programs of the state agency authorized by law to be performed. Such examinations shall include, but not be limited to: (a) How effectively the programs are administered; (b) Benefits of each program in relation to the expenditures; (c) Goals of the programs;

(d) Development of indicators by which the success or failure of a program may be gauged; (e) Conformity of programs with legislative intent; (f) Assistance to legislative committees dealing with specific programs; (g) Impact of federal grant-in-aid programs on agency programs.

(3) “State agency” means each state board, commission, department, office or institution, educational or otherwise, of the state of Idaho. State agency shall also mean any city, county, district or other political subdivision of the state created by statute which has the authority to levy, collect and spend tax moneys.

History.

I.C., § 67-458, as added by 1993, ch. 327, § 3, p. 1186; am. 1996, ch. 65, § 2, p. 188.

§ 67-459. Term of membership and organization of committee. — All members appointed to the joint legislative oversight committee shall serve for a term as provided by the legislative council. The committee shall meet no later than thirty (30) days after appointment by the legislative council for the purpose of organizing the committee. A chairman and cochairman shall be appointed by the legislative council and shall be from different houses of the legislature and from different political parties. Actual and necessary expenses and per diem shall be allowed as provided by the legislative council and shall be paid from the legislative account.

History.

I.C., § 67-459, as added by 1993, ch. 327, § 3, p. 1186.

STATUTORY NOTES

Cross References.

Legislative account, § 67-451.

Legislative council, § 67-427.

§ 67-460. Powers of committee. — The joint legislative oversight committee shall have the following powers:

(1) To direct the director of legislative performance evaluations in accordance with [section 67-461, Idaho Code](#), to review the performance of any state agency or program and to prepare reports for submission to the joint legislative oversight committee.

(2) To contract with private individuals or entities for the conduct of performance evaluations or portions thereof.

(3) To examine witnesses, to require the appearance of any person and the production of papers or records, including books, accounts, documents, computer records, and other materials, and to order the appearance of any person for the purpose of producing papers or records, including books, accounts, documents, computer records, and other materials, as is provided other legislative committees.

(4) To administer oaths to witnesses appearing before the committee when, by a majority vote, the committee deems the administration of an oath necessary and advisable as provided by law.

(5) To determine that a witness has perjured himself by testifying falsely before the committee, and to direct the attorney general to institute legal proceedings as provided by law.

(6) To conduct meetings at such times as the cochairmen deem necessary.

(7) To issue subpoenas upon the signature of either of the cochairmen; provided that the district court in and for the county in which any inquiry, evaluation, investigation, hearing or proceeding may take place shall have the power to compel obedience by proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from the court or the refusal to testify or produce papers or records, including books, accounts, documents, computer records, and other materials, in court.

History.

[I.C., § 67-460](#), as added by 1993, ch. 327, § 3, p. 1186; am. 1996, ch. 32, § 1, p. 83; am. 1996, ch. 65, § 3, p. 188; am. 2007, ch. 90, § 27, p. 246.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Contempts, § 7-601 et seq.

Director of legislative performance evaluations, § 67-457.

Perjury, § 18-5401 et seq.

Amendments.

This section was amended by two 1996 acts which appear to be compatible and have been compiled together; The 1996 amendment, by ch. 32, § 1, in subsection (5) substituted “of papers or records, including books, accounts, documents, computer records, and other materials” for “of any paper or document” in two places; and added subdivision (8).

The 1996 amendment, by ch. 65, § 3, deleted former subsections (1) and (3) which read: “(1) To direct the management system analyst and staff in the development of performance evaluation surveys and work plans in concert with agencies and programs,”; “(3) To direct the management system analyst and staff to prepare a request for proposal (RFP) for the evaluation of the performance outcome findings of a given agency or program. Such RFP shall be submitted for bids to independent contractors to conduct a final performance evaluation and present recommendations to implement actions necessary to carry out such findings.” redesignated former subsections (2), (4), (5), (6) and (7) as present subsections (1), (2), (3), (4) and (5), respectively and added present subsection (6); in present subsection (1), substituted “director of legislative performance evaluations” for “management system analyst and staff,” deleted “outcomes” following “review the performance,” and substituted “agency or program and to prepare reports for submission” for “agency and to prepare preliminary performance outcome findings for presentation.”

The 2007 amendment, by ch. 90, corrected the designation of the last paragraph.

§ 67-461. Conduct of and issuance of performance evaluation reports. — (1) In conducting a performance evaluation, the director of legislative performance evaluations shall obtain an overview of the operations of the agency or program.

(a) The survey phase will develop background information, including roles and identities of key personnel, identify actual and potential financial, managerial and operational problem areas and determine whether and to what extent detailed audit tests may be required in each specific area.

(b) In consultation with the agency or program, the director of legislative performance evaluations will develop a performance evaluation work plan.

(2) Prior to the presentation of any performance evaluation to the committee, the evaluated agency and the governor shall have an opportunity to review the performance evaluation report and issue a response.

(a) The response of the agency and the governor to the performance evaluation report shall be included in the final report when it is presented to the committee.

(b) All documents, writings and information transmitted pursuant to this subsection shall be deemed confidential and shall not be released to the public prior to the time the committee issues its performance evaluation report pursuant to subsection (3) of this section.

(c) Any person violating the provisions of this subsection regarding confidentiality shall be guilty of a misdemeanor.

(3) The committee shall issue performance evaluation reports, favorable or unfavorable, of any state agency, and such reports shall be a public record except that:

(a) Prior to the release of a performance evaluation report or the point at which a performance evaluation is no longer being actively pursued, all papers, physical and electronic records and correspondence and other supporting materials comprising the work papers in the possession of the

director of legislative performance evaluations or other entity charged with the preparation of a performance evaluation report shall be confidential and exempt from disclosure pursuant to chapter 1, title 74, Idaho Code.

(b) All other records or materials in the possession of the director of legislative performance evaluations or other entity charged with the preparation of a performance evaluation report that would otherwise be confidential or exempt from disclosure shall be exempt from disclosure pursuant to the provisions of chapter 1, title 74, Idaho Code.

(c) Nothing herein shall be construed to prohibit or prevent public access to state agency records in the possession of the director of legislative performance evaluations that would otherwise be subject to disclosure pursuant to the provisions of chapter 1, title 74, Idaho Code. The director of legislative performance evaluations shall refer requests for access to those records directly to the state agency that is the official custodian of the requested records, which shall be responsible for responding to the request for public records.

(4) If data supplied by an individual are needed to initiate, continue or complete a performance evaluation, the director of legislative performance evaluations may by written memorandum to the file provide that the individual's identity will remain confidential and exempt from disclosure under chapter 1, title 74, Idaho Code, and this written memorandum will protect the identity of the person from disclosure under chapter 1, title 74, Idaho Code, notwithstanding any other provision of law to the contrary.

(5) A final copy of the report, including recommendations, the evaluated agency's response, and the governor's response, shall be submitted to the governor and to the official, officer or person in charge of the state agency examined at least one (1) day prior to its release, and shall be made available to each member of the legislature no later than one (1) day following the report's receipt by the joint legislative oversight committee.

(6) The committee may meet in executive session to consider whether to direct the director of legislative performance evaluations to initiate or continue a performance evaluation or to receive or consider materials exempt from disclosure under subsection (2), (3) or (4) of this section.

History.

I.C., § 67-461, as added by 1993, ch. 327, § 3, p. 1186; am. 1994, ch. 180, § 170, p. 420; am. 1996, ch. 65, § 4, p. 188; am. 1996, ch. 226, § 1, p. 740; am. 2000, ch. 429, § 1, p. 1384; am. 2000, ch. 430, § 1, p. 1386; am. 2015, ch. 141, § 166, p. 379.

STATUTORY NOTES

Cross References.

Director of legislative performance evaluations, § 67-457.

Joint legislative oversight committee, § 67-457.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Amendments.

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 65, § 4, in subsection (1), at the beginning of the first sentence substituted “In conducting a” for “Prior to any”, substituted “director of legislative performance evaluations” for “legislative management systems analyst” in the first and third sentences, in the first sentence, deleted “conduct a survey to” preceding “obtain an overview” and in the second sentence inserted “phase” following “The survey”; in subsection (2), in the first and second sentences substituted “agency and the governor” for “agency, and the governor and state controller” in two places, in the first sentence substituted “report” for “findings” preceding “and issue a response.”, in the second sentence inserted “report” following “performance evaluation” and substituted “included in the final report” for “included in the performance evaluation”; in subsection (3) substituted “director of legislative performance evaluations” for “legislative council employee” in the second sentence and for “legislative council” in the third sentence, in the fourth sentence inserted “final” following “A”, deleted “signed by the cochairmen of the committee” following “copy of the report”, deleted “committee” preceding “recommendations”, inserted “the evaluated agency’s response, and the governor’s response,” preceding “shall be submitted”, deleted “, to the state controller, to each member of the

legislature,” preceding “and to the official, officer”, inserted the phrase beginning “at least one (1)” and ending “oversight committee” at the end of the sentence; and added subsection (4).

The 1996 amendment, by ch. 226, § 1, in subsection (3) inserted “or the point at which a performance evaluation is no longer being actively pursued” preceding “all papers” in the second sentence and added the present fourth sentence.

This section was amended by two 2000 acts, both effective April 17, 2000, which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 429, § 1 added the present subdivision designations (1)(a), (1)(b), (2)(a), (2)(b), (2)(c), (3)(a) and (3)(b); added the present subsection designations (4) and (5); redesignated former subsection (4) as present subsection (6); in subsection (3) added “except that:” at the end of the introductory language; and in subsection (4) deleted “and the individual will not provide the data to the director of legislative performance evaluations without an assurance that the individual’s identity will remain confidential and exempt from disclosure” preceding “the director of legislative”.

The 2000 amendment, by ch. 430, § 1 added the present subdivision designations (1)(a), (1)(b), (2)(a), (2)(b), (2)(c), (3)(a) and (3)(b); added the present subsection designations (4) and (5); redesignated former subsection (4) as present subsection (6); in subsection (3) added “except that:” at the end of the introductory language; in subsection (3)(b) substituted “All” for “Additionally a”; added subsection (3)(c); and in subsection (6) substituted “(2), (3) or (4)” for “(2) or (3)”.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” throughout this section.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such

amendment was adopted, the amendment to this section by S.L. 1994, ch. 180, § 170 became effective on January 2, 1995.

§ 67-462. Recording testimony under oath. — Whenever making a performance evaluation, the committee may require that testimony be given under oath, which may be administered by the chairman or by a person authorized by law to administer oaths, and may require that the testimony be recorded by an official court reporter or by some other competent person, under oath, which report when written, certified and approved by the person as being the direct transcript of the testimony, proceedings, documents, expenditure review or performance evaluation, shall be prima facie a correct statement of the testimony, proceedings, documents, expenditure review or performance evaluation provided that the person's signature to the certificate shall be duly acknowledged by him before a notary public.

History.

I.C., § 67-462, as added by 1993, ch. 327, § 3, p. 1186.

§ 67-463. Assistance. — The office of the attorney general, the office of the state controller and the administrator of the division of financial management are authorized to assist the joint legislative oversight committee in its conduct of performance evaluations if the committee and the director of legislative performance evaluations deems [deem] that such offices may be helpful.

History.

I.C., § 67-463, as added by 1993, ch. 327, § 3, p. 1186; am. 1994, ch. 180, § 171, p. 420; am. 1996, ch. 65, § 5, p. 188.

STATUTORY NOTES

Cross References.

Administrator of division of financial management, § 67-1910.

Attorney general, § 67-1401 et seq.

State controller, § 67-1001.

Compiler's Notes.

The bracketed term near the end of the section was added by the compiler to correct the syntax of the sentence.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment to this section by S.L. 1994, ch. 180, § 171 became effective on January 2, 1995.

§ 67-464. Quorum. — There shall be no business transacted, including adoption of a rule or procedure, without the presence of a quorum of the committee and no action shall be valid unless approved by the majority of those members present and voting and entered upon the minutes of the committee.

History.

I.C., § 67-464, as added by 1993, ch. 327, § 3, p. 1186.

§ 67-465. Special oversight committee on state funded substance abuse treatment. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-465, as added by 2001, ch. 362, § 12, p. 1275, became null and void on April 15, 2006, pursuant to S.L. 2001, ch. 362, § 15.

Idaho Code Ch. 5

• Title 67 •, « Ch. 5 »

Chapter 5

ENACTMENT AND OPERATION OF LAWS

Sec.

67-501. Endorsement of bills.

67-502. Approval of bills.

67-503. Passage of bills over veto — Authentication.

67-504. Return of bill during adjournment.

67-505. Bills not returned.

67-506. Designation of laws by chapters.

67-507. Proposal of constitutional amendments.

67-507a. Statement of meaning, purpose of proposed amendment.
[Repealed.]

67-508. Enrollment and preservation of constitutional amendments.

67-509. Publication of legislative journals and session laws — Distribution and report.

67-510. Statutes and resolutions — When effective.

67-511. Effect of amendment.

67-512. Repeal of repealing act.

67-513. Repeal of penal law.

67-514. Titles to bills.

§ 67-501. Endorsement of bills. — Every bill must, as soon as delivered to the governor, be endorsed as follows: “This bill was received by the governor this day of,”

History.

R.S., § 150; am. R.C., § 63; reen. C.L., § 63; C.S., § 104; I.C.A., § 65-501; am. 2007, ch. 90, § 28, p. 246.

STATUTORY NOTES

Cross References.

Constitutional provisions governing the enactment of laws, Idaho **Const., Art. III, §§ 14 to 22.**

Enactment of appropriation bills, §§ 67-3513, 67-3514.

Amendments.

The 2007 amendment, by ch. 90, deleted “nineteen” in the date line.

§ 67-502. Approval of bills. — When the governor approves a bill he must set his name thereto, with the date of his approval.

History.

R.S., § 151; reen. R.C. & C.L., § 64; C.S., § 105; I.C.A., § 65-502.

§ 67-503. Passage of bills over veto — Authentication. — When a bill has passed both houses of the legislature, and is returned by the governor without his signature and with objections thereto, and upon a reconsideration passes both houses by a two-thirds (2/3) vote, it must be authenticated as having become a law by a certificate indorsed thereon, or attached thereto, in the following form:

“This bill having been returned by the governor with his objections thereto, and after reconsideration having passed both houses, by a two-thirds vote, it has become a law this day of,,” which indorsement, signed by the president of the senate and speaker of the house, is a sufficient authentication thereof. Such bill must then be deposited with the laws, in the office of the secretary of state.

History.

R.S., § 152; am. R.C., § 65; reen. C.L., § 65; C.S., § 106; I.C.A., § 65-503.

STATUTORY NOTES

Cross References.

Disapproval of appropriation bills, Idaho [Const., Art. IV, § 11](#).

Secretary of state, § 67-901 et seq.

Veto power of governor, Idaho [Const., Art. IV, § 10](#).

§ 67-504. Return of bill during adjournment. — If, on the day the governor desires to return a bill without his approval and with his objections thereto to the house in which it originated, that house has adjourned for the day (but not for the session), he may deliver the bill with his message to the presiding officer, clerk, or any member of such house, and such delivery is as effectual as though returned in open session, if the governor, on the first day the house is again in session, by message notifies it of such delivery, and of the time when, and the person to whom, such delivery was made.

History.

R.S., § 153; reen. R.C. & C.L., § 66; C.S., § 107; I.C.A., § 65-504.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Return.

The word “return” means that a bill must be placed into the actual physical possession of the appropriate office or officer to effectuate the return. Consequently, for purposes of Idaho [Const., Art. IV, § 10](#), and this section, “return” means relinquishing control and physically delivering the veto to an official to whom the governor is authorized under those provisions to return the veto. [Coeur d’Alene Tribe v. Denney \(In re Verified Petition for Writ of Mandamus\)](#), 161 Idaho 508, 387 P.3d 761 (2015).

§ 67-505. Bills not returned. — Every bill which has passed both houses of the legislature, and has not been returned by the governor within five (5) days, thereby becoming a law, is authenticated by the governor causing the fact to be certified thereon by the secretary of state in the following form: “This bill having remained with the governor five (5) days (Sundays excepted), and the legislature being in session, it has become a law this day of, ..,” which certificate must be signed by the secretary of state and deposited with the laws in his office. Where the legislature by adjournment, prevents the return of a bill, the governor, if he disapproves thereof, shall file the same, with his objections, in the office of the secretary of state within ten (10) days after said adjournment (Sundays excepted) or the same shall become a law.

History.

R.S., § 154; compiled and reen. R.C., § 67; reen. C.L., § 67; C.S., § 108; I.C.A., § 65-505; am. 2007, ch. 90, § 29, p. 246.

STATUTORY NOTES

Cross References.

Bill becoming law without signature of the governor, Idaho **Const., Art. IV, § 10**.

Secretary of state, § 67-901 et seq.

Amendments.

The 2007 amendment, by ch. 90, deleted the reference to the twentieth century in the date line.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Application.

Authentication.

Secretary of state.

Application.

This section makes clear that the moment the deadline has passed for the return of a bill, the bill automatically becomes law. Therefore, when a bill was delivered to the governor on March 30, 2015, and was vetoed by the governor on April 3, 2015, and that veto was received by the Senate on April 6, 2015, the veto was not timely and the bill must be treated as if the governor had signed it. *Coeur d'Alene Tribe v. Denney (In re Verified Petition for Writ of Mandamus)*, 161 Idaho 508, 387 P.3d 761 (2015).

Authentication.

This section's plain language reveals that when the governor fails to veto a bill within five days after presentment, no further action is required to authenticate the bill. *Coeur d'Alene Tribe v. Denney (In re Verified Petition for Writ of Mandamus)*, 161 Idaho 508, 387 P.3d 761 (2015).

Secretary of State.

Once the deadline has passed for the governor's return of a veto, the secretary of state has a non-discretionary duty to certify the bill as law. There is nothing discretionary about the secretary of state's role in the matter. *Coeur d'Alene Tribe v. Denney (In re Verified Petition for Writ of Mandamus)*, 161 Idaho 508, 387 P.3d 761 (2015).

§ 67-506. Designation of laws by chapters. — Each act of the legislature shall, on becoming a law, be designated as “Chapter of the Laws of,” adding its chapter number and the year in which it becomes a law; and in respect to each session of the legislature, the laws enacted at such session shall be numbered consecutively in the order, as nearly as may be practicable, in which they become laws, each year having its own independent series of consecutive chapter numbers. Whenever a bill has been duly certified as having become a law and has been deposited with the laws in the office of the secretary of state, as provided by law, it shall be the duty of the secretary of state to designate such law by its appropriate chapter number, as hereinbefore provided, and to mark such designation upon such law; and thereafter, such law, whenever cited, enumerated, referred to or amended, may be designated simply as “Chapter of the Laws of,” adding its chapter number and the year in which it became a law.

History.

1911, ch. 59, § 1, p. 159; reen. C.L., § 67a; C.S., § 109; I.C.A., § 65-506.

STATUTORY NOTES

Cross References.

Duty of secretary of state, § 67-903.

Printing and distribution of laws, § 67-904.

CASE NOTES

Cited *Vandenberg v. Welker*, 74 Idaho 508, 264 P.2d 1029 (1953).

§ 67-507. Proposal of constitutional amendments. — Amendments to the Constitution may be proposed by joint resolution in either house of the legislature of this state, and if the same shall be voted for by two-thirds (2/3) of all the members of each of the two (2) houses, voting separately, in the manner provided by section 1, of article 20, of the Constitution, the amendment or amendments proposed shall be submitted to the electors of this state for adoption or rejection in the manner provided by the election laws of the state.

History.

1890-1891, p. 229, § 1; reen. 1899, p. 162, § 1; am. R.C., § 68; reen. C.L., § 68; C.S., § 110; I.C.A., § 65-507.

STATUTORY NOTES

Cross References.

Enrollment and preservation of amendments, § 67-508.

**§ 67-507a. Statement of meaning, purpose of proposed amendment.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1949, ch. 159, § 1, p. 346, was repealed by S.L. 1976, ch. 235, § 3. For present comparable law, see §§ 67-453 and 67-913.

§ 67-508. Enrollment and preservation of constitutional amendments. — Whenever any amendments to the Constitution shall have been proposed to and adopted by the electors of this state, as by this and the preceding section provided, the same shall be enrolled and numbered in the order of time in which they may be adopted, and preserved by the secretary of state among the public records of his office.

History.

1890-1891, p. 229, § 2; reen. 1899, p. 162, § 2; reen. R.C. & C.L., § 69; C.S., § 111; I.C.A., § 65-508.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Compiler's Notes.

The words “preceding section” refer to § 67-507, which was enacted by the same 1890 session law that enacted this section. Former § 67-507a was not added to the Idaho Code until 1949.

§ 67-509. Publication of legislative journals and session laws — Distribution and report. — (1) On the first legislative day or as soon thereafter as the speaker shall have been elected, it shall be the duty of the president of the senate and the speaker of the house of representatives each to appoint a printing committee for his body whose duties shall be, in addition to its duties prescribed by the rules of said bodies respectively, to immediately meet in joint session and to provide for the publication of the journals of the two (2) houses of the legislature. Said committee shall determine the form of the journals to be used, the size of the type, the number to be distributed to each member of the legislature and the method of distribution, the number of journals to be made available for sale through the secretary of state's office, and the manner in which the journals are to be bound for the permanent copies of the journal. All costs incurred in publishing the journals shall be a proper charge against the legislative fund [legislative account], unless an appropriation for such purpose has been made.

(2) The joint printing committee of the senate and house of representatives shall exist to print, publish, and distribute the session laws. The joint printing committee will consist of the printing committees of each house. The chairmen of the respective judiciary and rules committees, or their designee, will chair their house's printing committee and cochair the joint printing committee.

(3) Prior to the final adjournment of a regular legislative session, the joint printing committee must meet and determine the proper method of printing and preserving the session laws of that legislative session. The joint printing committee must give consideration to the cost, accessibility, and preservation of the session laws. The joint printing committee will provide sufficient physical copies of session laws.

(4) The published session laws must include the bills, concurrent resolutions, joint resolutions, petitions and memorials enacted or adopted during the legislative session. In addition, the session laws must include amendments to the constitution adopted at the preceding general election, and bills, concurrent resolutions, joint resolutions, and memorials enacted

or adopted during an intervening extraordinary session of the legislature. The published session laws must include a title page, a table of contents, certificate pages, tables of amended and repealed statutes, an index of contents, and a list of each member of the senate and house of representatives.

(5) Prior to the final adjournment of a regular legislative session, the printing committee of each house must meet jointly to consider the proper method to print and preserve the session laws. The joint printing committee will prepare a brief written report of its recommendations, which written report must be delivered to the judiciary and rules committees of the senate and the house of representatives. The written report must include the projected cost to implement its recommendation, together with a distribution list of persons that will be provided printed volume(s) of the session laws. If the written or amended report is rejected by the legislature by concurrent resolution, the joint printing committee will meet to reconsider its recommendations. If the written or amended report is not rejected, the joint printing committee will enter into an agreement(s) that is substantially consistent with its written or amended report to print, publish, and deliver the session laws, which costs will be paid from the legislative account.

History.

1907, p. 327, § 1; am. R.C., § 70; reen. C.L., § 70; C.S., § 112; am. 1921, ch. 5, § 1, p. 6; am. 1931, ch. 8, § 1, p. 12; I.C.A., § 65-509; am. 1935, ch. 43, § 3, p. 79; am. 1965, ch. 17, § 1, p. 29; am. 1971, ch. 19, § 1, p. 33; am. 1977, ch. 232, § 1, p. 687; am. 2018, ch. 236, § 3, p. 555.

STATUTORY NOTES

Cross References.

Appropriation for printing, § 67-905.

Secretary of state, § 67-901 et seq.

Amendments.

The 2018 amendment, by ch. 236, in the section heading, inserted “and session laws” and added “and report”; designated the existing provisions as

subsection (1); and added subsections (2) through (5).

Compiler's Notes.

The bracketed insertion near the end of subsection (1) was added by the compiler to correct the name of the referenced account. See § 67-451.

The “s” enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1965, ch. 17 declared an emergency. Approved February 5, 1965.

Section 2 of S.L. 1971, ch. 19 declared an emergency. Approved February 11, 1971.

§ 67-510. Statutes and resolutions — When effective. — No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage.

History.

R.S., §§ 155, 156; compiled and reen. R.C., § 71; reen. C.L., § 71; C.S., § 113; I.C.A., § 65-510; am. 1972, ch. 176, § 1, p. 444.

STATUTORY NOTES

Cross References.

Constitutional provision, Idaho [Const., Art. III, § 22](#).

Compiler's Notes.

Section 1 of S.L. 2009, ch. 343 provided: “If the First Regular Session of the Sixtieth Idaho Legislature has not adjourned sine die on or before May 2, 2009, all acts or sections of acts enacted by the First Regular Session of the Sixtieth Idaho Legislature and signed into law or allowed to become law by the Governor without his signature in which the entire act or sections of those acts would have been effective on July 1, 2009, had the Legislature adjourned sine die on or before May 2, 2009, shall be amended to have the act or the section of the act become effective on July 1, 2009, and an emergency is declared to exist and shall be deemed incorporated in the title of the bill and the preamble or the body of the law, as applicable. The provisions of this section shall not affect any act or section of an act signed into law or allowed to become law by the Governor without his signature, in which any effective date other than July 1, 2009, has been incorporated in the title of the bill and the preamble or the body of the law, as applicable.”

Effective Dates.

Section 2 of S.L. 1972, ch. 176 declared an emergency. Approved March 17, 1972.

CASE NOTES

Effective Date.

In the absence of a declared emergency, this section provides that, “no legislation shall take effect until July 1 of the year of the enactment or sixty (60) days from the end of the legislative session in which the legislation has been passed, whichever date occurs last.” Since the legislation containing the amendment to § 23-903 had no emergency clause, the April 4, 1989, amendment to § 23-903 became effective on July 1, 1989. The court rejected the county board of commissioners’ suggested interpretation of § 67-511, that the effective date of an amendment to an existing statute is the date of enactment, and instead concluded that the effective date of the amendment to § 23-903 was July 1, 1989, in accordance with the rule set down in this section. *Fox v. Board of County Comm’rs*, 121 Idaho 686, 827 P.2d 699 (Ct. App. 1991).

Cited *Gillesby v. Board of Comm’rs*, 17 Idaho 586, 107 P. 71 (1910); *Nims v. Gilmore*, 17 Idaho 609, 107 P. 79 (1910); *Employment Sec. Agency v. Joint Class “A” Sch. Dist. No. 151*, 88 Idaho 384, 400 P.2d 377 (1965); *V-1 Oil Co. v. State Tax Comm’n*, 98 Idaho 140, 559 P.2d 756 (1977); *Hunt v. Sun Valley Co.*, 561 F.2d 744 (9th Cir. 1977); *Minich v. Gem State Developers, Inc.*, 99 Idaho 911, 591 P.2d 1078 (1979); *State v. Groves*, 109 Idaho 1006, 712 P.2d 707 (Ct. App. 1985).

RESEARCH REFERENCES

A.L.R. — What is Reasonable Accommodation of Deaf or Hearing-Impaired Employee for Purposes of Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. 2 A.L.R. Fed. 3d 1.

§ 67-511. Effect of amendment. — Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form; but the portions which are not altered are to be considered as having been the law from the time when they were enacted and the new provisions are to be considered as having been enacted at the time of the amendment.

History.

R.S., § 157; reen. R.C. & C.L., § 72; C.S., § 114; I.C.A., § 65-511.

CASE NOTES

Effective Date.

Where a statute created two classes of district judges, those in office when the statute became effective and those elected later, a subsequent amendment of the statute, not affecting the classification provision, did not change the effective date of the statute for the purpose of determining the classification to the effective date of the amendment. *State ex rel. Nelson v. McCarty*, 76 Idaho 153, 279 P.2d 879 (1955).

Where a statute defining “covered employment” subject to the employment security tax “on and after January 1, 1962,” and enumerating certain exclusions, was amended in 1963 only as to one of the paragraphs pertaining to exclusions, the amendment did not relate back to January 1, 1962, but applied only to taxes accruing subsequent to the effective date of the amendment. *Employment Sec. Agency v. Joint Class “A”* *Sch. Dist. No. 151*, 88 Idaho 384, 400 P.2d 377 (1965).

In the absence of a declared emergency, § 67-510 provides that, “no legislation shall take effect until July 1 of the year of the enactment or sixty (60) days from the end of the legislative session in which the legislation has been passed, whichever date occurs last.” Since the legislation containing the amendment to § 23-903 had no emergency clause, the April 4, 1989 amendment to § 23-903 became effective on July 1, 1989. The court rejected the county board of commissioners’ suggested interpretation of this section, that the effective date of an amendment to an existing statute is the

date of enactment, and instead concluded that the effective date of the amendment to § 23-903 was July 1, 1989, in accordance with the rule set down in § 67-510. *Fox v. Board of County Comm'rs*, 121 Idaho 686, 827 P.2d 699 (Ct. App. 1991).

§ 67-512. Repeal of repealing act. — No act or part of an act, repealed by another act of the legislature, is revived by the repeal of the repealing act without express words reviving such repealed act or part of an act.

History.

1874, p. 858, § 1; am. R.S., § 158; reen. R.C. & C.L., § 73; C.S., § 115; I.C.A., § 65-512.

§ 67-513. Repeal of penal law. — The repeal of any law creating a criminal offense does not constitute a bar to the prosecution and punishment of an act already committed in violation of the law so repealed, unless the intention to bar such prosecution and punishment is expressly declared in the repealing act.

History.

1874, p. 858, § 2; am. R.S., § 159; reen. R.C. & C.L., § 74; C.S., § 116; I.C.A., § 65-513; am. 1984, ch. 24, § 1, p. 45.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1984, ch. 24 declared an emergency and made the act effective retroactive to July 1, 1983. Approved March 5, 1984.

CASE NOTES

Construction.

Municipal ordinances.

Purpose.

Construction.

The amendment of a law on which a criminal proceeding was based did not prevent the prosecution for an offense committed prior to the amendment. *State v. Koseris*, 66 Idaho 449, 162 P.2d 172 (1945).

Prosecution of crimes committed under an act, whether by way of information or indictment, is not barred by repeal of act, since general savings clause continues provisions of repealed act as to crimes committed prior to repeal. *Ellenwood v. Cramer*, 75 Idaho 338, 272 P.2d 702 (1954).

Municipal Ordinances.

At common law, repeal of penal statute was bar to pending prosecution of offense committed before repeal. This rule generally obtains both as to

statutes and municipal ordinances unless otherwise provided by repealing statute or ordinance. This section contains provision as to statutes, but there is no similar provision as to municipal ordinances. *Moore v. Ashton*, 36 Idaho 485, 211 P. 1082 (1922).

Purpose.

This section is a general saving clause to insure punishment of offenders, and preserves in force, in order to attain that end, statutes providing for punishment of offenders which are amended in such a way as to change or increase punishment and which would otherwise be subject to objection as ex post facto laws. *In re Davis*, 6 Idaho 766, 59 P. 544 (1899), aff'd sub nom, *Davis v. Burke*, 179 U.S. 399, 21 S. Ct. 210, 45 L. Ed. 249 (1900).

Cited *State v. Webb*, 76 Idaho 162, 279 P.2d 634 (1955); *State v. Nichols*, 110 Idaho 823, 718 P.2d 1261 (Ct. App. 1986).

§ 67-514. Titles to bills. — The title to each legislative bill shall contain a specific phrase which expresses the subject matter of the bill. Such phrase may be the short title of the act, and shall be used in legislative journals to identify the bill upon introduction, along with other identification required by rules of the House of Representatives or Senate.

History.

I.C., § 67-514, as added by 1975, ch. 9, § 1, p. 14.

CASE NOTES

Cited *Sunshine Mining Co. v. Allendale Mut. Ins. Co.*, 107 Idaho 25, 684 P.2d 1002 (1984).

Chapter 6

EMPLOYEES OF LEGISLATURE

Sec.

67-601 — 67-609. [Repealed.]

67-610. Control of employees of the legislature.

§ 67-601 — 67-609. Employees of senate and house — Duties — Elections — Removal. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1890-1891, p. 5, §§ 1, 2, 4-10; reen. 1899, p. 3, §§ 1, 2, 4-10; reen. R.C. & C.L., §§ 75, 76, 78-84; C.S., §§ 117, 118, 120-126; I.C.A., §§ 65-601, 65-602, 65-604 — 65-610; am. 1937, ch. 1, § 1, p. 3; 1947, ch. 3, §§ 1-3, p. 4, were repealed by S.L. 1969, ch. 256, § 1.

§ 67-610. Control of employees of the legislature. — The selection, removal, duties and compensation of employees of the legislature shall be prescribed by the rules of the house of representatives and the senate.

History.

1969, ch. 256, § 2, p. 792.

Chapter 7

LEGISLATIVE SERVICES OFFICE

Sec.

67-701. Legislative services office.

67-702. Audit function of legislative services office.

67-703. Budget and policy analysis — Function of legislative services office.

67-704. Research and legislation — Function of legislative services office.

§ 67-701. Legislative services office. — There is hereby created under the direction of the legislative council the legislative services office which shall carry out the professional and nonpartisan responsibilities defined in this chapter. The legislative council shall appoint a director of the legislative services office who shall serve at the pleasure of the council and who may employ such employees and engage the services of such persons and agencies as may be necessary or desirable in the performance of the legislative council's duties. Employees of the legislative services office are nonclassified, at-will employees and shall serve at the pleasure of the director.

History.

I.C., § 67-701, as added by 2009, ch. 52, § 11, p. 136.

STATUTORY NOTES

Cross References.

Legislative council, § 67-427.

Prior Laws.

Former chapter 7 of title 67, which comprised the following sections, was repealed by S.L. 2009, ch. 52, § 2, effective March 24, 2009.

67-701. Office of legislative counsel created — Selection — Term. [1947, ch. 40, § 1, p. 43.]

67-702. Requirements for selection. [1947, ch. 40, § 2, p. 43.]

67-703. Duties of legislative counsel. [1947, ch. 40, § 3, p. 43.]

67-704. Assisting in preparation or consideration of bills upon request. [1947, ch. 40, § 4, p. 43.]

67-705. Office. [1947, ch. 40, § 5, p. 43.]

67-706. Compensation — Employees authorized. [1947, ch. 40, § 6, p. 43.]

67-707. Access to law library and official records of state. [1947, ch. 40, § 7, p. 43.]

67-708. Papers and records confidential — Exceptions. [1947, ch. 40, § 8, p. 43.]

Compiler's Notes.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-702. Audit function of legislative services office. — (1) The legislative services office at the direction of the legislative council has authority to:

- (a) Perform an annual audit of the statewide annual financial report prepared by the state controller in accordance with generally accepted government auditing standards.
- (b) Perform an annual audit of federal financial assistance provided to the state that meets the requirements established by the federal government.
- (c) Perform a management review of each executive department of state government at least once in a three (3) year period. Management reviews shall cover the period since the last review and may include evaluation of internal controls over financial and program activities and other matters related to the department's operations.
- (d) Provide audit services to any unit of state government or public institution that requests services, if authorized by the legislative council.
- (e) Report to the attorney general all facts which may indicate malfeasance, illegal expenditure of public funds or misappropriation of public funds or public property for such investigation or action, civil or criminal, as the attorney general may deem necessary. The governor and state controller shall also be notified when the report is made to the attorney general pursuant to this subsection. The legislature shall be informed through the regular audit process pursuant to [section 67-429, Idaho Code](#).
- (f) Be the official repository of all audit reports of the state and political subdivisions that are required to be audited pursuant to sections 67-450B and 67-450C, Idaho Code.
- (g) Report to the legislature annually no later than February 1 of each year on all land exchanged by the state board of land commissioners pursuant to [section 58-138, Idaho Code](#), during the preceding year, and all appraisals and review appraisals conducted on such state endowment land exchanges pursuant to the provisions of [section 58-138, Idaho Code](#).

(2) The legislative council reserves the right to audit or examine any and every fund in the state treasury and any institution, association, board or other defined entity created by, or that receives an appropriation from, the legislature.

History.

I.C., § 67-702, as added by 2009, ch. 52, § 11, p. 136; am. 2014, ch. 246, § 2, p. 615.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Legislative council, § 67-427.

State controller, § 67-1001 et seq.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

Prior Laws.

Former § 67-702 was repealed. See Prior Laws, § 67-701.

Amendments.

The 2014 amendment, by ch. 246, added paragraph (1)(g).

Compiler's Notes.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-703. Budget and policy analysis — Function of legislative services office. — The legislative services office at the direction of the legislative council has authority to:

(1) Provide the legislature with research and analysis of current and projected state revenue, state expenditure and state tax expenditures;

(2) Provide the legislature with a report analyzing the governor's proposed levels of revenue and expenditures for budgets and supplemental budget requests submitted to the legislature;

(3) Provide an analysis of the impact of the governor's proposed revenue and expenditure plans for the next fiscal year;

(4) Review and evaluate requests for appropriations, including proposed plans and policies related to such requests, and make recommendations to the joint finance-appropriations committee and the legislature in relation thereto;

(5) Prepare draft legislation, statements of purpose and fiscal notes that individually or collectively represent motions affirmatively voted upon by the senate finance and house of representatives appropriations committees to provide each state agency with an annual budget;

(6) Have access, with or without prior notice, during regular operating hours to any records or other documents maintained by any state agency relating to their expenditures, revenues, operations and structure;

(7) Conduct research on matters of economic and fiscal policy and report to the legislature on the result of the research;

(8) Provide economic reports and studies on the state of the state's economy, including trends and forecasts for consideration by the legislature;

(9) Conduct budget and tax studies and provide general fiscal and budgetary information;

(10) Review and make recommendations on the operation of state programs in order to appraise the implementation of state laws regarding

the expenditure of funds and to recommend means of improving their efficiency;

(11) Recommend to the legislature changes in the mix of revenue sources for programs, in the percentage of state expenditures devoted to major programs, and in the role of the legislature in overseeing state government expenditures and revenue projections;

(12) Make a continuing study and investigation of the building needs of the government of the state of Idaho, including, but not limited to, the following: the current and future requirements of new buildings, the maintenance of existing buildings, rehabilitating and remodeling of old buildings, the planning of administrative offices, and exploring the methods of financing buildings and related costs;

(13) Conduct studies of state and local finances, analyzing and making recommendations to the legislature on issues including levels of state support for political subdivisions, basic levels of local need, balances of local revenues and options, relationship of local taxes to individuals' abilities to pay and financial reporting by political subdivisions; and

(14) Develop and make available to the legislature and its standing or special legislative committees such fiscal information as will assist the legislature or any legislative committee in its deliberations.

History.

I.C., § 67-703, as added by 2009, ch. 52, § 11, p. 136.

STATUTORY NOTES

Cross References.

Joint finance-appropriations committee, § 67-432.

Legislative council, § 67-427.

Prior Laws.

Former § 67-703 was repealed. See Prior Laws, § 67-701.

Compiler's Notes.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

§ 67-704. Research and legislation — Function of legislative services office. — (1) The legislative services office at the direction of the legislative council shall have authority to prepare or assist in the preparation or amendment of legislative bills at the request of any committee or member of the senate or house of representatives. Upon request from the governor, lieutenant governor, attorney general, state controller, secretary of state, superintendent of public instruction or state treasurer, the legislative services office at the direction of the legislative council shall have authority to prepare legislative bills for such constitutional officer.

(2) In administering this section the legislative services office shall establish and maintain a legislative reference library.

(3) The legislative services office shall review and analyze administrative rules in accordance with [section 67-454, Idaho Code](#), and perform other duties as required by the legislative council.

(4) The legislative services office is directed to furnish such secretarial and other staff assistance as the citizens' committee on legislative compensation and the redistricting commission [commission for reapportionment] may require in the performance of their duties.

History.

[I.C., § 67-704](#), as added by 2009, ch. 52, § 11, p. 136; am. 2009, ch. 224, § 1, p. 704.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Citizens' committee on legislative compensation, § 67-406a.

Governor, § 67-801 et seq.

Legislative council, § 67-427.

Lieutenant governor, § 67-809.

Secretary of state, § 67-901 et seq.

State controller, § 67-1001 et seq.

Superintendent of public education, § 67-1501 et seq.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-704 was repealed. See Prior Laws, § 67-701.

Amendments.

The 2009 amendment, by ch. 224, in the last sentence in subsection (1), deleted “From August 1 until December 1 of each year” from the beginning.

Compiler’s Notes.

The bracketed insertion in subsection (4) was added by the compiler to correct the name of the referenced agency. See § 72-5201 et seq.

S.L. 2009, Chapter 52 became law without the signature of the governor, effective July 1, 2009.

Chapter 8

EXECUTIVE AND ADMINISTRATIVE OFFICERS — GOVERNOR AND LIEUTENANT-GOVERNOR

Sec.

67-801. State executive officers enumerated.

67-802. Office of governor — Duties of governor.

67-803. Transmission of list of appointments.

67-804. Records of governor's office.

67-805. Acting governor to perform same duties — Compensation of president pro tempore of the senate or speaker of the house of representatives when acting as governor.

67-805A. Succession to office of governor.

67-806. Coordination of programs relating to the Idaho national engineering laboratory. [Repealed.]

67-806A. [Amended and Redesignated.]

67-807. Agreement for rail passenger service application.

67-808. Governor authorizing housing accommodation construction.

67-808a. Purchase of furnishings and accessories for governor's residence authorized. [Repealed.]

67-808b. Maintenance and upkeep of governor's residence. [Repealed.]

67-808c. Governor to occupy governor's residence.

67-808d. Governor's expense allowance.

67-809. Duties of lieutenant governor — Actual and necessary expenses — Compensation of senate president pro tempore when acting as lieutenant governor.

67-810. Employees.

67-811. Display of governors' pictures.

- 67-812. Additions to exhibit — Cost.
- 67-813. Establishment of governor-elect transitional fund.
- 67-814. Certification of election of governor-elect by secretary of state.
- 67-815. Facilities to be furnished by director of the budget.
- 67-816. Time during which fund is available to governor-elect.
- 67-817. Incumbent governor, when governor-elect, prohibited from using fund.
- 67-818. Coordination of policy and programs related to threatened species and endangered species in Idaho.
- 67-819. Funding — Account created.
- 67-820. Flags flown at half-staff — Death in line of duty for police, firefighters, paramedics or EMTs.
- 67-821. Coordination of policy and programs related to drug and substance abuse.
- 67-822. [Reserved.]
- 67-823. Coordination of policy and programs related to science, technology, engineering and math education in Idaho.
- 67-824. STEM education fund.
- 67-825. STEM action center advisory board — Meetings — Honorarium and expenses — Organization.
- 67-826. Idaho roadless rule implementation commission.
- 67-827. Coordination of policy and programs — Information technology services and cybersecurity.
- 67-827A. Powers and duties.
- 67-828. Office of information technology services may charge and receive payment for certain services to units of state government — Appropriation.
- 67-829. Advance payments and interaccount transactions.
- 67-830. Declaration of purpose.

67-831. Definitions.

67-832. Idaho technology authority — Composition — Appointment and term of office — Reimbursement — Contracting for necessary services.

67-833. General powers and duties of the authority.

67-834. Definitions.

67-835. Integrated property records system — Transfer of responsibility.

67-836. Agencies to provide records and data.

67-837. Responsibility for quality.

§ 67-801. State executive officers enumerated. — The executive department shall consist of a governor, lieutenant-governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction.

History.

R.S., § 170; compiled from **Const., art. 4, § 1**, in R.C., § 85; reen. C.L., § 85; C.S., § 127; I.C.A., § 65-701; am. 1994, ch. 180, § 172, p. 420.

STATUTORY NOTES

Cross References.

Attorney general, election and qualifications, § 34-612.

Governor, election and qualifications, § 34-607.

Lieutenant-governor, election and qualifications, § 34-608.

Proof of acts of executive, § 9-315.

Secretary of state, election and qualifications, § 34-609.

State controller, election and qualifications, § 34-610.

State treasurer, election and qualifications, § 34-611.

Superintendent of public instruction, election and qualifications, § 34-613.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment of this section by S.L. 1994, ch. 180, became effective January 2, 1995.

§ 67-802. Office of governor — Duties of governor. — The office of the governor shall be composed of: the state liquor division, as provided by chapter 2, title 23, Idaho Code; the military division, as provided by title 46, Idaho Code; the division of financial management; and such other divisions and units as are established or assigned by law, or created through administrative action of the governor.

The governor shall appoint an administrator for each division, with the advice and consent of the senate. Administrators shall serve at the pleasure of the governor, and shall be exempt from the provisions of chapter 53, title 67, Idaho Code. Other subordinate staff necessary to accomplish a division's mission shall be subject to the provisions of chapter 53, title 67, Idaho Code.

The supreme executive power of the state is vested by **section 5, article IV, of the constitution** of the state of Idaho, in the governor, who is expressly charged with the duty of seeing that the laws are faithfully executed. In order that he may exercise a portion of the authority so vested, the governor is authorized and empowered to implement and exercise those powers and perform those duties by issuing executive orders from time to time which shall have the force and effect of law when issued in accordance with this section and within the limits imposed by the constitution and laws of this state. Such executive orders, when issued, shall be serially numbered for each calendar year and may be referred to and cited by such numerical designation and title. Each executive order issued hereunder shall be effective only after signature by the governor, attestation by and filing with the secretary of state, who shall keep a permanent register and file of such orders in the same manner as applies to acts of the legislature. In addition, each executive order required by chapter 52, title 67, Idaho Code, to be published in the administrative bulletin shall be filed with the administrative rules coordinator and published in the bulletin. Each such executive order issued by the governor must prescribe a date after which it shall cease to be effective, which shall be within four (4) calendar years of the effective date of such order, and if no date after which such order shall cease to be effective is contained in the order, then such order shall cease to be effective four (4) calendar years from the issuance thereof, unless renewed by

subsequent executive order. The governor may modify or repeal any executive order by issuance of a new executive order. The procedures expressly set forth in this section shall be sufficient to make an executive order effective.

In addition to those powers prescribed above, and those prescribed by the constitution, the governor has the powers, and may perform the duties prescribed in this section and the following sections: 1. To supervise the official conduct of all executive and ministerial officers.

2. To see that all offices are filled, and the duties thereof performed, or, in default thereof, apply such remedy as the law allows; and if the remedy is imperfect, acquaint the legislature therewith at its next session.

3. To make the appointments and supply the vacancies provided by law.

4. He is the sole official organ of communication between the government of this state and the government of any other state or territory, or of the United States.

5. Whenever any suit or legal proceeding is pending in this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state.

6. He may require the attorney general or prosecuting attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney general to aid any prosecuting attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars (\$1,000) each, payable out of the state treasury, for the apprehension of any convict who has escaped from the state prison, or of any person who has committed, or is charged with the commission of, an offense punishable with death; and also offer like rewards, not exceeding five hundred dollars (\$500) each, in cases of felony, where the offense is not punishable with death.

9. To perform such duties respecting fugitives from justice as are prescribed by the penal code.

10. To issue and transmit election proclamations as prescribed by law.

11. He may require any officer to make special reports to him in writing on demand.

12. He has such other powers and may perform such other duties as are devolved upon him by any law of this state.

History.

R.S., § 180; am. 1890-1891, p. 198, § 1; reen. 1899, p. 135, § 1; reen., R.C. & C.L., § 90; C.S., § 128; I.C.A., § 65-702; am. 1974, ch. 22, § 2, p. 592; am. 1980, ch. 358, § 1, p. 922; am. 1980, ch. 361, § 1, p. 937; am. 1986, ch. 301, § 1, p. 750; am. 1993, ch. 216, § 98, p. 587; am. 2009, ch. 23, § 61, p. 53.

STATUTORY NOTES

Cross References.

Adjutant general, appointment, § 46-111.

Administrative departments responsible to governor, § 67-2401.

Administrative rules coordinator, § 67-5202.

Bear River Compact commissioners, appointment and fixing remuneration, §§ 42-3501, 42-3504.

Constitutional provisions, Idaho [Const., Article IV](#).

Contest of election, state executive offices, jurisdiction over, § 34-2104.

Division of financial management, § 67-1910.

Election of governor, § 34-607.

Extradition, § 19-4506.

Fish and game department, annual report of director, § 36-106.

Governor designated chief budget officer, § 67-3501.

Governor may solemnize marriages, § 32-303.

Historic or archaeological sites, designation, § 67-4115.

Idaho fish and game commission, appointment of, § 36-102.

Initiative and referendum petitions, duties in connection with, §§ 34-1806, 34-1813.

Loyalty oath, § 59-401.

Martial law, proclamation by, § 46-602.

National guard, duties respecting as commander in chief, § 46-101 et seq.

National guard or militia, ordering out in state of extreme emergency, § 46-601.

Property and fiscal officer for national guard, appointment, § 46-108.

Rail passenger service negotiation for by governor, § 67-807.

State soil and water conservation commission, appointment of members, § 22-2718.

Supreme Court judges, election contests, § 34-2004.

Supreme Court reports to be distributed to governor, § 1-505.

Veterans affairs commission, appointment of members, § 65-201.

Amendments.

The 2009 amendment, by ch. 23, substituted “state liquor division” for “state liquor dispensary” in the first paragraph.

Compiler’s Notes.

The penal code, referred to in paragraph 10, is no longer maintained as a separate part of the Idaho Code. It formerly contained Titles 18 to 20 of the Idaho Code.

Effective Dates.

Section 61 of S.L. 1974, ch. 22 provided that the act would be in full force and effect on and after July 1, 1974.

CASE NOTES

Extradition.

Before issuing warrant of arrest in extradition proceedings, governor of surrendering state need require no independent proof that accused is

fugitive from justice apart from requisition papers. *Pettibone v. Nichols*, 203 U.S. 192, 27 S. Ct. 111, 51 L. Ed. 148 (1906); *Moyer v. Nichols*, 203 U.S. 221, 27 S. Ct. 121, 51 L. Ed. 160 (1906).

RESEARCH REFERENCES

Idaho Law Review. — Sound and Fury, Signifying Nothing: Nullification and the Question of Gubernatorial Executive Power in Idaho, Comment. 49 Idaho L. Rev. 659 (2013).

Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-803. Transmission of list of appointments. — Within ten (10) days after the meeting of the legislature the governor must transmit to it a list of all the appointments made by him and not before communicated.

History.

R.S., § 181; reen. R.C. & C.L., § 91; C.S., § 129; I.C.A., § 65-703.

§ 67-804. Records of governor's office. — The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.
2. A register of statements in capital cases made to him, with his action thereon.
3. An account of all his disbursements of state moneys, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.
4. A register of all appointments made by him, with date of commission, names of appointee and predecessor.
5. A record of all persons confined in the state prison, showing the name of the convict, his age and general appearance, when and where convicted, and of what crime, the time of his sentence, and when such time expires.

History.

R.S., § 182; reen. R.C. & C.L., § 92; C.S., § 130; I.C.A., § 65-704.

§ 67-805. Acting governor to perform same duties — Compensation of president pro tempore of the senate or speaker of the house of representatives when acting as governor. — (1) Every provision in the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward him, extends to the person performing for the time being the duties of acting governor.

(2) Notwithstanding any other provisions of law to the contrary, when performing the duties of acting governor, the president pro tempore of the senate or the speaker of the house of representatives will receive, in addition to his daily legislative compensation, an amount equal to the difference between that daily legislative compensation and the daily salary of the governor.

History.

R.S., § 183; reen. R.C. & C.L., § 93; C.S., § 131; I.C.A., § 65-705; am. 1977, ch. 105, § 7, p. 222; am. 2009, ch. 29, § 1, p. 80.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 29, in the section catchline, added “— Compensation of president pro tempore of the senate or speaker of the house of representatives when acting as governor”; and added the subsection (1) designation and subsection (2).

§ 67-805A. Succession to office of governor. — (1) In case of the death, resignation, or permanent removal from office for any cause of the governor, the lieutenant governor shall succeed to all of the powers, duties and emoluments of the office of governor for the residue of the term, and shall be, in all respects, the governor of the state. Upon such succession, the office of lieutenant governor is vacant, and shall be filled as provided by law.

(2) In case of temporary inability to perform his duties, or in the case of his temporary absence from the state, the lieutenant governor shall perform such duties as acting governor until the disability is removed, or until the governor returns to the state.

(3) In any case in which the lieutenant governor succeeds to the office of governor, the president pro tempore of the senate shall serve as acting lieutenant governor until the office of lieutenant governor is filled.

History.

I.C., § 67-805A, as added by 1977, ch. 105, § 8, p. 222.

§ 67-806. Coordination of programs relating to the Idaho national engineering laboratory. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 67-806, which comprised 1921, ch. 168, § 1, p. 363; I.C.A., § 65-706; am. 1977, ch. 105, § 9, p. 222; am. 1980, ch. 17, § 1, p. 34, was repealed by S.L. 1984, ch. 203, § 1.

Compiler's Notes.

This section, which comprised I.C., § 67-806, as added by 1989, ch. 335, § 2, p. 847, was repealed by S.L. 2007, ch. 83, § 11. See § 39-105.

§ 67-806A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-806A was amended and redesignated as § 57-822 by S.L. 2007, ch. 83, § 12.

§ 67-807. Agreement for rail passenger service application. — In addition to any other powers and duties as are devolved upon him by law, the governor, or his authorized representative, may negotiate with the proper representatives of any other state, to establish an agreement to enable the state of Idaho, in concert with other states, to submit an application to the national railroad passenger corporation for the institution of railroad passenger service under the provisions of section 403(b) of the rail passenger service act, 45 U.S.C. 563(b). The governor may not participate in the submission of an application until the base agreement and any application have been approved by the legislature.

History.

I.C., § 67-807, as added by 1981, ch. 259, § 1, p. 550.

STATUTORY NOTES

Prior Laws.

A former § 67-807, which comprised I.C., § 67-807, as added by 1955, ch. 33, § 1, p. 53 was repealed by S.L. 1974, ch. 22, § 1.

Federal References.

Section 403(b) of the rail passenger service act, 45 U.S.C. 563(b), referred to near the end of the first sentence, was repealed by Act July 5, 1994, P.L. 103-272. The national railroad passenger corporation is now known as Amtrak. See 49 USCS § 20101 et seq.

§ 67-808. Governor authorizing housing accommodation construction. — The governor of Idaho is hereby authorized, with the approval of the board of examiners and for and on behalf of the state of Idaho, to contract with competent parties for the construction of housing accommodations on state-owned real property used in the operation of any state institution (for use by state officers and employees working at such institution) and to similarly contract for the acquisition of real property, with or without a contractual provision for the construction of similar housing accommodations thereon, near to, and for use in connection with the operation of, any such institution.

Contracts for such accommodations on such state-owned land may provide that said accommodations shall not become a part of the realty, except as hereinafter provided, that the state of Idaho shall lease said accommodations for an agreed period of time and at an agreed consideration and that said accommodations shall become a part of the realty when the total agreed consideration has been paid by the state of Idaho.

History.

1957, ch. 223, p. 502; am. 2015, ch. 244, § 41, p. 1008.

STATUTORY NOTES

Cross References.

Board of examiners, § 67-2001 et seq.

Amendments.

The 2015 amendment, by ch. 244, substituted “realty” for “reality” near the beginning of the second paragraph.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-808a. Purchase of furnishings and accessories for governor's residence authorized. [Repealed.]

Repealed by S.L. 2015, ch. 244, § 42, effective July 1, 2015. For present comparable provisions, see §§ 67-455 and 67-455A.

History.

1947, ch. 179, § 2, p. 437.

**§ 67-808b. Maintenance and upkeep of governor's residence.
[Repealed.]**

Repealed by S.L. 2015, ch. 244, § 43, effective July 1, 2015. For present comparable provisions, see §§ 67-455 and 67-455A.

History.

1947, ch. 179, § 3, p. 437.

§ 67-808c. Governor to occupy governor's residence. — The governor of the state of Idaho may, during his term of office, for the convenience and benefit of the state of Idaho, occupy the governor's residence as a residence.

History.

1947, ch. 179, § 4, p. 437; am. 1987, ch. 11, § 1, p. 15.

STATUTORY NOTES

Effective Dates.

Section 6 of S.L. 1947, ch. 179 declared an emergency. Approved March 12, 1947.

Section 2 of S.L. 1987, ch. 11 declared an emergency. Approved February 24, 1987.

§ 67-808d. Governor's expense allowance. — In recognition of the duties that devolve upon the governor as the chief executive of this state, there is hereby set aside out of any moneys not otherwise appropriated from the general fund, the sum of \$10,000. Such moneys shall be set aside from the general fund at the beginning of each fiscal biennium, and may be used by the governor at his discretion to assist in defraying expenses relating to or resulting from the discharge of his official duties. Such moneys shall be accounted for solely on the certificate of the governor, and the provisions of chapter 36, title 67, Idaho Code, and section 67-3516, Idaho Code, do not apply to such expense allowance.

History.

I.C., § 67-808d, as added by 1969, ch. 273, § 1, p. 815.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

§ 67-809. Duties of lieutenant governor — Actual and necessary expenses — Compensation of senate president pro tempore when acting as lieutenant governor. — (1) The lieutenant governor shall perform on a day to day basis such duties in and for the government of this state as the governor may from time to time direct. The lieutenant governor shall perform such additional duties as the governor may deem necessary and desirable to promote the improvement of state government and the development of the human, natural and industrial resources of this state. At the written direction of the governor, the lieutenant governor may represent the state in negotiations, compacts, hearings and other matters dealing with the states or the federal government. He shall cooperate with all state and local governmental agencies to promote and encourage the orderly development of the resources of Idaho.

The lieutenant governor shall also exercise the powers and privileges of the office of governor and presidency of the senate as provided by sections 12 and 13, [article IV of the constitution](#) of the state of Idaho.

(2) The lieutenant governor shall be entitled to receive the following expense allowances:

(a) As unvouchered expense allowances:

(i) While performing the duties of acting governor, the difference between the daily salary of lieutenant governor and the daily salary of governor, which amount shall be in addition to the salary as lieutenant governor. Such amount shall not be paid for any day on which the lieutenant governor claims an unvouchered expense allowance as president of the senate.

(ii) For each day spent serving as president of the senate during a legislative session, the per diem authorized for a member of the legislature by the citizen's [citizens'] committee on legislative compensation.

(iii) Actual mileage expense reimbursement for coming to and returning from any regular, extraordinary or organizational session of

the legislature at the same rate as mileage expense reimbursement is made for other state officers and employees.

(iv) For each day actually spent in the office serving as lieutenant governor while the legislature is not in session, the same daily amount of per diem enumerated in subsection (2)(a)(ii) of this section.

(v) For each day actually spent in the office serving as lieutenant governor when the legislature is not in session, the sum of twenty-five dollars (\$25.00) if the lieutenant governor maintains his primary residence in Ada county.

(b) As vouchered expense allowances:

(i) Actual and necessary expenses incurred while serving as president of the senate during a legislative session, subject to the same requirements and limitations as if a member of the legislature.

(ii) Actual and necessary expenses incurred while serving as lieutenant governor or as acting governor.

(3) Unvouchered expense allowances and vouchered expense reimbursement for duties performed as president of the senate shall be paid from the legislative fund [legislative account]. All other compensation and/or allowances for duties performed as the lieutenant governor shall be paid from the appropriation made for the office of the lieutenant governor.

(4) The actual and necessary expenses of the lieutenant governor while performing his official duties as lieutenant governor or as acting governor are hereby expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code (Standard Travel Pay and Allowance Act of 1949).

(5) Notwithstanding any other provisions of law to the contrary, when performing the duties of acting lieutenant governor, the president pro tempore of the senate will receive, in addition to his daily legislative compensation, an amount equal to the difference between that daily legislative compensation and the daily salary of the lieutenant governor.

History.

1959, ch. 48, § 1, p. 103; am. 1967, ch. 232, § 1, p. 685; am. 1967, ch. 407, § 1, p. 1218; am. 1969, ch. 282, § 1, p. 855; am. 1977, ch. 283, § 1, p.

815; am. 1984, ch. 203, § 2, p. 499; am. 2001, ch. 269, § 1, p. 975; am. 2009, ch. 29, § 2, p. 80.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 29, in the section catchline, added “— Compensation of senate president pro tempore when acting as lieutenant governor”; and added subsection (5).

Compiler’s Notes.

The bracketed insertion in paragraph (2)(a)(ii) was added by the compiler to correct the name of the referenced committee. See § 67-406a.

The bracketed insertion in subsection (3) was added by the compiler to correct the name of the referenced account. See § 67-451.

The words enclosed in parentheses so appeared in the law as enacted.

Although the title of S.L. 1977, Chapter 283 contained a statement “declaring an emergency and providing for retroactive application,” chapter 283, as signed by the governor did not contain any emergency clause or provision for retroactive application.

§ 67-810. Employees. — The lieutenant-governor is authorized to employ such necessary help in the performance of his official duties as shall be necessary, and the cost and expense thereof shall be paid out of the regular appropriation for the lieutenant-governor.

History.

I.C., § 67-810, as reen. by S.L. 1967, ch. 232, § 2, p. 685; am. 1977, ch. 283, § 2, p. 815.

STATUTORY NOTES

Prior Laws.

Section 2 of S.L. 1967, ch. 232 repealed former § 67-810, comprising S.L. 1959, ch. 48, § 2, p. 103, and reenacted the section in its present form.

§ 67-811. Display of governors' pictures. — A display of the separate pictures of each governor of Idaho, from territorial days to the present, is hereby authorized. The location of the display shall be on the walls of the second floor hallway in the west end of the statehouse.

History.

1965, ch. 103, § 1, p. 189.

§ 67-812. Additions to exhibit — Cost. — Each governor shall henceforth keep this exhibit up to date by adding thereto his own photograph, of comparable size and quality, and the cost thereof shall be paid from his office budget.

History.

1965, ch. 103, § 2, p. 189.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 1965, ch. 103 declared an emergency. Approved March 8, 1965.

§ 67-813. Establishment of governor-elect transitional fund. — There is hereby established in the state treasury a fund to be known and designated as the “governor-elect transitional fund.” All moneys in the governor-elect transitional fund are perpetually appropriated and dedicated for the purposes set forth in this act.

History.

1969, ch. 42, § 1, p. 107.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” at the end of this section refers to S.L. 1969, Chapter 42, which is compiled as §§ 67-813 to 67-817.

§ 67-814. Certification of election of governor-elect by secretary of state. — As soon as possible after every general election at which a governor-elect has been elected, the secretary of state shall certify to the administrator of the division of financial management and to the state controller the fact of such election.

History.

1969, ch. 42, § 2, p. 107; am. 1994, ch. 180, § 173, p. 420.

STATUTORY NOTES

Cross References.

Administrator of division of financial management, § 67-1910.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment of this section by S.L. 1994, ch. 180, became effective January 2, 1995.

§ 67-815. Facilities to be furnished by director of the budget. — The director of the budget shall, upon request by every governor-elect, furnish the following services and facilities to the governor-elect from moneys set aside in the governor-elect transitional fund:

(1) Suitable office space, furniture, fixtures and equipment; (2) Payment of salaries and expenses of staff personnel designated by the governor-elect; (3) Payment of travel expenses for the governor-elect and his staff personnel; (4) Payment of incidental office expenses, including postage, communications and supplies.

History.

1969, ch. 42, § 3, p. 107.

STATUTORY NOTES

Cross References.

Governor-elect transitional fund, § 67-813.

§ 67-816. Time during which fund is available to governor-elect. —
The moneys authorized for use of the governor-elect as herein provided shall be available from the date of certification as provided in section 67-814[, Idaho Code,] til the governor-elect officially assumes the office of governor.

History.

1969, ch. 42, § 4, p. 107.

STATUTORY NOTES

Compiler's Notes.

The phrase “as herein provided” refers to S.L. 1969, Chapter 42, which is codified as §§ 67-813 to 67-817.

The bracketed insertion near the middle of the section was added by the compiler to conform to the statutory citation style.

§ 67-817. Incumbent governor, when governor-elect, prohibited from using fund. — In the case where the governor-elect is the incumbent governor, there shall be no expenditures of funds for the provision of services and facilities to such incumbent under this act.

History.

1969, ch. 42, § 5, p. 107.

STATUTORY NOTES

Compiler's Notes.

The term “this act” at the end of this section refers to S.L. 1969, Chapter 42, which is compiled as §§ 67-813 to 67-817.

§ 67-818. Coordination of policy and programs related to threatened species and endangered species in Idaho. — (1) There is hereby created in the office of the governor, the “Office of Species Conservation.” The administrator of the office of species conservation shall be the official in the state designated to oversee implementation of federal recovery plans, as provided in 16 U.S.C. section 1533(f), and to fulfill the duties provided by this section. The administrator shall be appointed by, and serve at the pleasure of, the governor and shall be subject to confirmation by the state senate.

(2) The duties of the office of species conservation shall include:

(a) Coordination of all state departments and divisions with duties and responsibilities affecting endangered species, threatened species, candidate species, species petitioned to be listed, and rare and declining species as defined in [section 36-2401, Idaho Code](#);

(b) Coordinating state implementation and response to federal recovery plans, biological opinions, guidance and projects among all state and local governments in the state of Idaho;

(c) Participation in regional efforts to cooperatively address endangered species, threatened species, candidate and petitioned species, and rare and declining species;

(d) Providing input and comment to federal and state agencies, and tribes on issues relating to endangered species, threatened species, candidate and petitioned species, and rare and declining species;

(e) Cooperating and consulting with the department of fish and game, the department of lands, the department of water resources, the department of agriculture, and the department of parks and recreation regarding agreements pursuant to [16 U.S.C. section 1533](#), [16 U.S.C. section 1535](#) and [16 U.S.C. section 1539](#);

(f) Negotiating agreements with federal agencies concerning endangered species, threatened species, candidate species, petitioned species, and rare and declining species including, but not limited to, agreements pursuant to [16 U.S.C. section 1533\(d\)](#) and [16 U.S.C. section 1539\(a\)](#),

other than those agreements negotiated pursuant to [16 U.S.C. section 1535](#);

(g) Providing the people of the state of Idaho with an ombudsman who can listen to citizens being harmed or hindered by the regulations of the ESA and direct them to the appropriate state or federal agency and/or speak on their behalf, as deemed appropriate by the ombudsman, to address issues or concerns related to the ESA;

(h) Serve as a repository for agreements and plans among governmental entities in the state of Idaho for the conservation of rare and declining species, petitioned, candidate, threatened and endangered species.

(3) State policy and management plans developed pursuant to this section shall be developed in accordance with the following subsections:

(a) State policy on rare and declining, petitioned, candidate, threatened, and endangered species and state management plans shall be developed in consultation with the appropriate state agencies. The appropriate state agency for wildlife and plant management issues is the department of fish and game. The appropriate state agency for timber harvest activities, oil and gas exploration activities and for mining activities is the department of lands. The appropriate state agencies for agricultural activities are the department of agriculture and the Idaho state soil and water conservation commission. The appropriate state agency for public road construction is the transportation department. The appropriate state agency for water rights is the department of water resources. The appropriate state agency for water quality is the department of environmental quality. The appropriate state agency for outfitting and guiding activities is the Idaho outfitters and guides licensing board;

(b) State management plans shall be the policy of the state of Idaho, but are subject to legislative approval, amendment or rejection by concurrent resolution. State management plans shall be subject to public notice and comment but shall not be subject to judicial review.

(4) The governor's office of species conservation shall prepare a report to the legislature recommending a plan to develop state conservation assessments and strategies for rare and declining species in the state of Idaho and submit that report and recommendation to the legislature. The

report and recommendation are subject to legislative approval, amendment or rejection by concurrent resolution.

(5) The state asserts primacy over the management of its fish, wildlife and water resources. Accordingly, any introduction or reintroduction of any aquatic or terrestrial species onto lands within the state or into state waters, including those actions that would impair or impede the state's primacy over its land and water, without state consultation and approval is against the policy of the state of Idaho and is hereby prohibited.

(6) No provision of this section shall be interpreted as to supersede, abrogate, injure or create rights to divert or store water and apply water to beneficial uses established under [section 3, article XV, of the constitution](#) of the state of Idaho, and title 42, Idaho Code.

History.

[I.C., § 67-818](#), as added by 2000, ch. 270, § 3, p. 77; am. 2001, ch. 103, § 99, p. 253; am. 2003, ch. 129, § 5, p. 379; am. 2005, ch. 402, § 1, p. 1367; am. 2010, ch. 279, § 33, p. 719; am. 2013, ch. 149, § 1, p. 346; am. 2017, ch. 136, § 1, p. 328.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.

Department of environmental quality, § 39-104.

Department of fish and game, § 36-101 et seq.

Department of lands, § 58-101 et seq.

Department of parks and recreation, § 67-4218 et seq.

Department of water resources, § 42-1701 et seq.

Idaho outfitters and guides licensing board, § 36-2105.

Idaho state soil and water conservation commission, § 22-2718.

Idaho transportation department, § 40-501 et seq.

Amendments.

The 2010 amendment, by ch. 279, substituted “Idaho state soil and water conservation commission” for “soil conservation commission” in the fourth sentence in paragraph (3)(a).

The 2013 amendment, by ch. 149, inserted subsection (5) and renumbered former subsection (5) as subsection (6).

The 2017 amendment, by ch. 136, in subsection (5), in the first sentence, inserted “and water resources”, in the second sentence, substituted “aquatic or terrestrial” for “federally listed” and added “and is hereby prohibited” at the end.

Effective Dates.

Section 5 of S.L. 2000, ch. 270 declared an emergency. Approved April 12, 2000.

Section 2 of S.L. 2005, ch. 402 declared an emergency. Approved April 15, 2005.

RESEARCH REFERENCES

Idaho Law Review. — Rethinking the ESA’s “Orderly Progression” — Recovery Credit Systems and Energy Development on Public Lands, Carlos R. Romo. 49 Idaho L. Rev. 471 (2013).

One Bird Causing a Big Conflict: Can Conservation Agreements Keep Sage Grouse off the Endangered Species List?, Comment. 49 Idaho L. Rev. 621 (2013).

The Original Role of the States in the Endangered Species Act, John Copeland Nagle. 53 Idaho L. Rev. 385 (2017).

§ 67-819. Funding — Account created. — (1) The governor's office of species conservation may accept private contributions, federal funds, funds from other public agencies or any other source. The moneys shall be used solely for the purposes provided in section 67-818, Idaho Code, and be expended and accounted for as provided by law.

(2) There is hereby established in the state treasury the species conservation fund which shall consist of all moneys received pursuant to subsection (1) of this section. Moneys in the species conservation fund shall be used for purposes described in [section 67-818, Idaho Code](#).

History.

[I.C., § 67-819](#), as added by 2000, ch. 270, § 4, p. 770.

STATUTORY NOTES

Effective Dates.

Section 5 of S.L. 2000, ch. 270 declared an emergency. Approved April 12, 2000.

§ 67-820. Flags flown at half-staff — Death in line of duty for police, firefighters, paramedics or EMTs. — (1) The governor, upon timely notification and verification of the death of a federal, state or local law enforcement officer, firefighter, paramedic or emergency medical technician who is employed or volunteering for an agency in the state of Idaho and who died in the line of duty, shall direct that the flag of the United States and the state flag be flown at half-staff, from the time of notification to the governor until the day following the memorial service, at the state capitol building and at other state and local government buildings. The flags shall be flown upon an existing flagstaff or flagstaffs or, at the option of the governor, a flagstaff or flagstaffs erected at an appropriate site, after consultation with organizations representing law enforcement officers, firefighters, paramedics or emergency medical technicians regarding the location and design of the flagstaff or flagstaffs. The flag flown over the capitol building in honor of the deceased shall be presented to the family.

(2) Except as prohibited by the United States flag code, the governor may direct that the flag of the United States be flown at half-staff at a monument honoring fallen service members, which directive shall be effective for a period of one (1) year and may be renewed by the governor annually. The governor may request the time, manner and condition of such direction in keeping with the traditions of the United States flag code.

History.

I.C., § 67-818, as added by 2000, ch. 273, § 1, p. 798; am. and redesign. 2005, ch. 25, § 121, p. 82; am. 2015, ch. 336, § 1, p. 1268.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 336, designated the existing provisions in the section as subsection (1) and added subsection (2).

Federal References.

The United States flag code, referred to twice in subsection (2), is codified as **4 USCS § 1 et seq.**

Compiler's Notes.

Session Laws 2000, ch. 270, § 3, and ch. 273, § 1, purported to enact a new § 67-818. Since S.L. 2000, ch. 270 also enacted a new § 67-819, the compiler redesignated this section, enacted by S.L. 2000, ch. 273, § 1, as § 67-820. The redesignation was made permanent by S.L. 2005, ch. 25, § 121.

Effective Dates.

Section 2 of S.L. 2000, ch. 273 declared an emergency. Approved April 13, 2000.

§ 67-821. Coordination of policy and programs related to drug and substance abuse. — (1) There is hereby established in the office of the governor the “Office of Drug Policy.” The administrator of the office of drug policy shall be the official in the state designated to oversee and execute the coordination of all drug and substance abuse programs within the state of Idaho. The administrator shall be appointed by and shall serve at the pleasure of the governor, and shall be subject to confirmation by the state senate.

(2) The office of drug policy shall: (a) Cooperate and consult with counties, cities and local law enforcement on programs, policies and issues in combating Idaho’s illegal drug and substance abuse problem; (b) Serve as a repository of agreements, contracts and plans concerning programs for combating illegal drug and substance abuse from community organizations and other relevant local, state and federal agencies and shall facilitate the exchange of this information and data with relevant interstate and intrastate entities; (c) Provide input and comment on community, tribal and federal plans, agreements and policies relating to illegal drug and substance abuse; and (d) Coordinate public and private entities to develop, create and promote statewide campaigns to reduce or eliminate substance abuse.

History.

I.C., § 67-821, as added by 2007, ch. 69, § 1, p. 183; am. 2012, ch. 107, § 14, p. 284.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 107, deleted former subsection (3), which read: “The administrator shall act as chairperson of the interagency committee on substance abuse prevention and treatment, as created in **section 39-303, Idaho Code**, to ensure that the interagency committee coordinates and directs all state entities regarding substance abuse prevention and treatment delivery services statewide.”

Effective Dates.

Section 4 of S.L. 2007, ch. 69 declared an emergency. Approved March 13, 2007.

§ 67-822. [Reserved.]

§ 67-823. Coordination of policy and programs related to science, technology, engineering and math education in Idaho. — (1) There is hereby created in the office of the governor the “Science, Technology, Engineering and Math (STEM) Action Center” and the STEM action center advisory board. The administrator of the STEM action center shall be the official in the state designated to coordinate and oversee implementation of STEM programs; to promote STEM through best practices in education to ensure connection with industry and Idaho’s long-term economic prosperity; to produce an Idaho STEM-competitive workforce to offer better access to competitive employment opportunities; and to drive student experience, engagement and industry alignment by identifying and implementing public and higher education STEM best practices to transform workforce development.

(2) The STEM action center advisory board shall consist of the following nine (9) members:

- (a) The director of the department of commerce, or his designee;
- (b) The director of the department of labor, or his designee;
- (c) One (1) member of the state board of education;
- (d) The superintendent of public instruction, or her designee; and
- (e) Five (5) members appointed by the governor, who shall serve at the pleasure of the governor for terms of three (3) years, and who shall be residents of the state and represent manufacturing or STEM-related industries. The board’s chairman will be elected annually by the members of the board.

(3) The terms of the first board shall be staggered with three (3) appointments expiring July 1, 2018; three (3) appointments expiring July 1, 2019; and three (3) appointments expiring July 1, 2020. Thereafter, the term of office for each member shall be three (3) years.

(4) A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment and for the balance of the unexpired term.

(5) The duties of the STEM action center shall include:

(a) Coordinate all state departments and divisions on STEM-related activities;

(b) Perform industry needs and education process foci on industry career talent, gap analysis and needs assessment to lead future STEM teacher professional development activities and goals;

(c) Align public education STEM activities with higher education STEM activities;

(d) Identify and coordinate best practices among public education and higher education;

(e) Strategically engage industry, business and public or government entities to cooperate with the STEM action center and focus outcomes and goals on workforce needs and opportunities;

(f) Support high-quality professional development focused on career readiness and talent development and provide other assistance for educators and students;

(g) Work cooperatively with the Idaho department of education and the Idaho state board of education to define and implement pilot programs and select schools to:

(i) Further STEM education;

(ii) Ensure that best practices are implemented; and

(iii) Integrate research and document results of that research; and

(h) Engage private entities to provide additional funding and/or in-kind employee time for STEM activities in schools supporting industry career readiness in addition to what is currently provided by private entities.

(6) The duties and oversight of the STEM action center shall not interfere or conflict with the duties and oversight of the state board of education.

(7) As funding allows, the administrator of the STEM action center shall:

- (a) Support high-quality professional development for educators regarding STEM education;
- (b) Ensure that the STEM action center acts as a research and development center for tools and best practice in STEM education coordination and development;
- (c) Review and acquire STEM education-related instructional materials and products for:
 - (i) Educator high-quality professional development;
 - (ii) Assessment, data collection, analysis and reporting; and
 - (iii) Public school instruction; and
- (d) Facilitate participation in interscholastic STEM-related competitions, fairs, expositions, camps and STEM education student programs;
- (e) Engage private industry in the development and maintenance of the STEM action center and STEM action center projects;
- (f) Use resources to bring the latest STEM content, 21st century skills and hands-on STEM education resources into public education classroom schools;
- (g) Annually identify at least five (5) best practice innovations used in Idaho schools that have resulted in growth in interest and performance in STEM by students and teachers involved in pilot programs, math academies and STEM projects;
- (h) Identify best practices being used outside the state and, as appropriate, develop and implement selected practices through pilot programs;
- (i) As appropriate, join and participate in a national STEM network and collaborate with neighboring states in STEM program development;
- (j) Identify performance changes linked to use of the best practices;
- (k) Support best methods of high-quality professional development for STEM education in kindergarten through grade 12, including methods of high-quality professional development pilot programs that reduce cost and increase effectiveness, implement practices that support industry

career readiness and talent development, and help educators learn how to most effectively implement STEM best practices, 21st century skills and STEM resources in classrooms;

(l) Support targeted high-quality professional development for improved instruction in K-12 STEM education, including:

- (i) Improved instructional materials and resources that are dynamic and engaging for students;
- (ii) Targeted instruction for students who traditionally avoid enrolling in STEM courses;
- (iii) Introduction of engaging engineering and other STEM programs;
- (iv) Use of applied instruction; and
- (v) Introduction of other research-based methods that support student achievement in STEM areas; and

(m) Provide an Idaho best practices STEM resource database, including best practices from public education, higher education, informal STEM partners and other STEM-related entities.

(8) The administrator shall track and compare the growth of students participating in a STEM action center program to all other similarly situated students in the state, in the following STEM-related activities, at the beginning and end of each year:

- (a) Public education high school graduation rates;
- (b) The number of students taking STEM courses at an institution of public higher education;
- (c) The number of students who graduate from an Idaho public school and begin a postsecondary education program; and
- (d) The number of students, as compared to all similarly situated students, who are performing at grade level in STEM classes.

(9) The STEM action center may:

- (a) Enter into contracts for the purposes of this section; and
- (b) Apply for, receive and disburse funds, contributions or grants from any source for the purposes set forth in this section.

(10) The administrator shall report the progress of the STEM action center, including the information described in subsection (5) of this section, to the following groups once each year:

- (a) The house and senate education committees;
- (b) The governor's office;
- (c) The joint finance-appropriations committee; and
- (d) The state board of education.

(11) The report described in subsection (10) of this section shall include information that demonstrates the effectiveness of the program, including:

- (a) The number of educators receiving high-quality STEM professional development;
- (b) The number of students receiving services from the STEM action center and the number of students participating in STEM camps, academies, pilot programs and classroom STEM activities;
- (c) A report on the STEM action center's fulfillment of its duties; and
- (d) Student performance of students participating in a STEM action center program.

History.

I.C., § 67-823, as added by 2015, ch. 304, § 1, p. 1202; am. 2018, ch. 23, § 1, p. 38; am. 2019, ch. 161, § 12, p. 526.

STATUTORY NOTES

Cross References.

Department of commerce, § 67-4701 et seq.

Department of labor, § 72-1333.

State board of education, § 33-101 et seq.

Superintendent of public instruction, § 67-1501 et seq.

Amendments.

The 2018 amendment, by ch. 23, inserted “advisory” preceding “board” at the end of the first sentence in subsection (1) and in the introductory paragraph in subsection (2); substituted “three (3) years” for “four (4) years” in the first sentence in paragraph (2)(e); added present subsection (3), and redesignated former subsections (3) to (6) as subsections (4) to (7); substituted “industry, business and public or government entities” for “industry and business entities” near the beginning of paragraph (5)(e); deleted former subsection (7), which read: “The board may prescribe other duties for the STEM action center in addition to the responsibilities described in this section”; in subsection (9), deleted “board” preceding “may” at the end of the introductory paragraph and deleted former paragraph (c), which read: “Employ, compensate and prescribe the duties and powers of individuals necessary to execute the duties and powers of the board for the STEM action center”; and, in the introductory paragraph of subsection (10), substituted “administrator” for “board” at the beginning and “subsection (5)” for “subsection (4)” near the end.

The 2019 amendment, by ch. 161, added punctuation at the end of paragraph (9)(b).

§ 67-824. STEM education fund. — There is hereby created in the state treasury the STEM education fund to support the programs and priorities of the state in advancing science, technology, engineering and mathematics education. The STEM education fund may accept private contributions, moneys from other public agencies or moneys from any other source. The moneys shall be used solely for the purposes provided in section 67-823, Idaho Code, and be expended and accounted for as provided by law. All expenditures from the STEM education fund must be approved by the Idaho STEM action center advisory board.

History.

I.C., § 67-824, as added by 2016, ch. 140, § 1, p. 406; am. 2018, ch. 23, § 2, p. 38.

STATUTORY NOTES

Cross References.

STEM action center advisory board, § 67-823.

Amendments.

The 2018 amendment, by ch. 23, inserted “advisory” near the end of the last sentence in the section.

§ 67-825. STEM action center advisory board — Meetings — Honorarium and expenses — Organization. — (1) The STEM action center advisory board shall hold no fewer than four (4) regular meetings annually at such time and place as may be directed by the board. Special meetings may be called by the chair at any time and place designated in such call.

(2) Each member shall be compensated as provided in [section 59-509\(c\), Idaho Code](#).

(3) At its first meeting after the first day of July in each year, the STEM action center advisory board shall organize and shall elect from its membership a chairperson and a vice chairperson.

History.

[I.C., § 67-825](#), as added by 2016, ch. 37, § 1, p. 87; am. 2018, ch. 23, § 3, p. 38.

STATUTORY NOTES

Cross References.

STEM action center advisory board, § 67-823.

Amendments.

The 2018 amendment, by ch. 23, inserted “advisory” in the section heading, near the beginning of the first sentence in subsection (1) and near the middle of subsection (3).

§ 67-826. Idaho roadless rule implementation commission. — (1) There is hereby established in the office of the governor an Idaho roadless rule implementation commission, hereinafter referred to as the “commission.”

(2) The commission, in conjunction with the United States forest service, shall coordinate, advise, and propose projects, plans, and policies occurring within or affecting “Idaho roadless areas,” as defined in [36 CFR 294.21](#).

(3) The commission shall, as a part of its role of reviewing and proposing projects, plans, and policies for Idaho roadless areas, coordinate and advise on activities related to shared stewardship, good neighbor authority, forest health, and the protection of communities at risk from wildfire within and adjacent to Idaho roadless areas.

(4) The commission shall coordinate and develop policies related to the United States forest service’s implementation and interpretation of the Idaho roadless rule as codified in [36 CFR 294](#), subpart C.

(5) The commission shall, as necessary, enter into memoranda of understanding or other agreements with the United States forest service to cooperate on activities subject to the Idaho roadless rule as provided in [36 CFR 294](#), subpart C.

(6) The commission shall be supported by the governor’s office of species conservation. Support for the commission shall include but is not limited to working with the United States forest service staff to propose and support projects within and adjacent to Idaho roadless areas, coordinate commission meetings, and other tasks as assigned by the commission or the governor.

(7) The members of the commission shall be appointed by and serve at the pleasure of the governor. The commission shall be composed of nine (9) to twelve (12) members. Three (3) members shall serve initial terms of four (4) years, three (3) members shall serve initial terms of three (3) years, and three (3) members shall serve initial terms of two (2) years. In the event that more than nine (9) members are appointed, such additional members shall serve initial terms of five (5) years. Following initial terms, members shall

serve four (4) year terms. Members may be appointed from the following three (3) categories: (a) Individuals who:

(i) Represent developed outdoor recreation, off-highway vehicle users or commercial recreation activities; (ii) Represent energy or mineral development interests; (iii) Represent the commercial timber industry; or (iv) Hold a federal grazing lease or other federal land use lease.

(b) Individuals who:

(i) Represent an environmental organization;
(ii) Represent dispersed recreation activities;
(iii) Represent archaeological and historical interests; or (iv) Represent a nationally or regionally recognized wildlife or sportsmen's interest group.

(c) Individuals who:

(i) Participated in the development of the Idaho roadless rule or were members of the roadless area conservation national advisory committee; (ii) Hold state, county, or local elected office; (iii) Represent an American Indian tribe within the state of Idaho; or (iv) Represent the public at large.

(8) There shall be a chairman and a vice chairman of the commission elected by a majority of the members of the commission. A majority of the commissioners shall constitute a quorum.

(9) The commission meetings shall, if determined warranted, be held semiannually or at other times upon the call of the chairman or a majority of the commission.

(10) The commission shall prepare and submit an annual report, on or before January 15 of each year, to the senate resources and environment committee and the house resources and conservation committee reflecting the actions of the commission pursuant to the provisions of this section and setting forth the membership of the commission.

History.

I.C., § 67-826, as added by 2018, ch. 27, § 1, p. 51; am. 2020, ch. 222, § 1, p. 654.

STATUTORY NOTES

Cross References.

Office of species conservation, § 67-818.

Amendments.

The 2020 amendment, by ch. 222, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

For additional information on the United States forest service, referred to in this section, see *<https://www.fs.usda.gov>*.

§ 67-827. Coordination of policy and programs — Information technology services and cybersecurity. — (1) There is hereby established in the office of the governor the “Office of Information Technology Services.”

(2) The administrator of the office of information technology services shall be the official in the state designated to oversee and execute the coordination and implementation of all information technology services and cybersecurity policies within the state of Idaho. The administrator shall be appointed by and shall serve at the pleasure of the governor and shall be subject to confirmation by the senate.

History.

I.C., § 67-827, as added by 2018, ch. 258, § 1, p. 609.

§ 67-827A. Powers and duties. — The office of information technology services is hereby authorized and directed:

(1)(a)(i) To control and approve the acquisition and installation of all telecommunications equipment and facilities for all departments and institutions of state government, except as provided in subparagraphs (ii), (iii) and (iv) of this paragraph;

(ii) To coordinate the acquisition and installation of all telecommunications equipment and facilities for the institutions of higher education and the elected officers in the executive branch;

(iii) To coordinate the acquisition and installation of all telecommunications equipment and facilities for the legislative and judicial branches;

(iv) Provided however, that the acquisition and installation of all public safety and microwave equipment shall be under the control of the military division.

(b) In approving or coordinating the acquisition or installation of telecommunications equipment or facilities, the office shall first consult with and consider the recommendations and advice of the directors or executive heads of the various departments or institutions. Any acquisition or installation of any telecommunications equipment or facilities that is contrary to the office's recommendation, or is not in harmony with the state's overall plan for telecommunications and information sharing, shall be reported in writing to the governor and the legislature.

(2) To provide a system of telecommunications for all departments and institutions of state government. Funds received pursuant to this subsection shall be appropriated for payment of telecommunication and telephone charges incurred by the various agencies and institutions of state government.

(3) To provide a means whereby political subdivisions of the state may use the state telecommunications system, upon such terms and under such conditions as the office of information technology services may establish.

(4) To accept federal funds granted by congress or by executive order for all or any of the purposes of this chapter, as well as gifts and donations from individuals and private organizations or foundations.

(5) To oversee implementation of cybersecurity policies to foster risk and cybersecurity management telecommunications and decision-making with both internal and external organizational stakeholders.

(6) To coordinate and consult with state agencies and officials regarding information security needs.

(7) To coordinate with state agencies and officials on penetration tests and vulnerability scans of state technology systems in order to identify steps to mitigate identified risks.

(8) To coordinate with state agencies and officials to ensure that state agencies implement mandatory education and training of state employees and provide guidance on appropriate levels of training for various classifications of state employees.

(9) To coordinate with appropriate state agencies to create, coordinate, publish, routinely update and market a statewide cybersecurity website as an information repository for intelligence-sharing and cybersecurity best practices.

(10) To coordinate public and private entities to develop, create and promote statewide public outreach efforts to protect personal information and sensitive data from cyber threats.

(11) To promulgate and adopt reasonable rules for effecting the purposes of this act pursuant to the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 67-827A, as added by 2018, ch. 258, § 2, p. 609.

STATUTORY NOTES

Cross References.

Military division as part of governor's office, § 67-802.

Compiler's Notes.

The term “this act” in subsection (11) refers to S.L. 2018, Chapter 258, which is codified as §§ 67-827 through 67-837.

§ 67-828. Office of information technology services may charge and receive payment for certain services to units of state government — Appropriation. — The office of information technology services is authorized to charge and receive payment for actual and necessary expenses incurred in providing services to any unit of state government under the provisions of this section. Any money received for services provided under the provisions of this section is hereby continually appropriated to the unit providing the services as compensation for such actual and necessary expenses.

History.

I.C., § 67-828, as added by 2018, ch. 258, § 3, p. 609.

STATUTORY NOTES

Cross References.

Office of information technology services, § 67-827.

§ 67-829. Advance payments and interaccount transactions. — Any unit of the office of information technology services providing services to departments of state government as authorized in this chapter may charge and receive payment in advance of performance thereof for a period of time not to exceed the current appropriation of the department requesting such services. Such payments may be used for personnel costs and operating expenditures of the unit providing the services.

History.

I.C., § 67-829, as added by 2018, ch. 258, § 4, p. 609.

STATUTORY NOTES

Cross References.

Office of information technology services, § 67-827.

§ 67-830. Declaration of purpose. — The legislature finds that advances in information technology and telecommunications present significant opportunities for the state of Idaho to improve the efficiency and productivity of state government, to encourage public access to government information and to enhance lifelong educational and training opportunities. The implications of these information technology and telecommunications advances require a centralized and coordinated strategic planning process involving the expertise and participation of experienced persons from both state government and the private sector. The establishment of the Idaho technology authority will facilitate a centralized approach to the acquisition and evaluation of necessary technical information and the informed development of a statewide strategic plan to ensure a coordinated approach to the design, procurement and implementation of information technology and telecommunications systems for both state government and the public.

History.

I.C., § 67-830, as added by 2018, ch. 258, § 5, p. 609.

STATUTORY NOTES

Cross References.

Idaho technology authority, § 67-832.

§ 67-831. Definitions. — As used in this chapter:

(1) “Information technology” means all present and future forms of computer hardware, computer software and services used or required for automated data processing, computer-related office automation or telecommunications.

(2) “State agencies” means all state agencies or departments, boards, commissions, councils and institutions of higher education but shall not include the elected constitutional officers and their staffs, the legislature and its staffs or the judiciary.

(3) “Telecommunications” means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images over a distance.

History.

I.C., § 67-831, as added by 2018, ch. 258, § 6, p. 609.

§ 67-832. Idaho technology authority — Composition — Appointment and term of office — Reimbursement — Contracting for necessary services. —

(1) An Idaho technology authority is hereby created within the office of information technology services. The authority shall consist of up to eighteen (18) members. The governor shall appoint up to two (2) members of the authority that shall include an information technology executive from private industry and an employee of state government. The remaining membership of the authority shall be comprised of the following: one (1) legislator appointed by the president pro tempore of the senate and one (1) legislator appointed by the speaker of the house of representatives to include one (1) legislator from each of the two (2) largest parties; one (1) person appointed by the chief justice of the supreme court to represent the judicial branch of state government; the state controller; the director of the department of administration; the director of the department of health and welfare; the director of the department of labor; the director of the transportation department; the director of the Idaho state police; the director of the department of correction; the chair of the Idaho geospatial council executive committee; the director of the legislative services office; the administrator of the office of information technology services; the administrator of the division of financial management in the office of the governor; the executive director of the state board of education; and the adjutant general of the military division in the office of the governor. The governor shall designate a member of the authority to act as chair and all appointed members of the authority shall serve at the pleasure of the appointing authority. An agency director may delegate responsibility to serve as a member of the authority to another senior management executive within the agency with authority for general agency operations whose responsibilities may include, but not be limited to, information technology operations.

(2) The authority shall hold no fewer than two (2) regular meetings annually at such time and place as may be directed by its chair. The authority may meet more frequently at the call of the chair or if requested by a majority of the authority's members. Members of the authority shall

serve with no salary or benefits, but are entitled to reimbursement as provided in [section 59-509\(b\), Idaho Code](#).

(3) The authority may contract for professional services or assistance when necessary or desirable to carry out its powers and duties.

History.

[I.C., § 67-832](#), as added by 2018, ch. 258, § 7, p. 609.

STATUTORY NOTES

Cross References.

Office of information technology services, § 67-827.

Compiler's Notes.

For more information on the Idaho geospatial council — executive committees, referred to in subsection (1), see <https://ita.idaho.gov/committees/igc>.

§ 67-833. General powers and duties of the authority. — The authority shall:

(1) Review and evaluate the information technology and telecommunications systems presently in use by state agencies; (2) Prepare statewide short-range and long-range information technology and telecommunications systems plans to meet the needs of state agencies; (3) Within the context of its strategic plans, establish statewide information technology and telecommunications policies, standards, guidelines, conventions and comprehensive risk assessment criteria that will assure uniformity and compatibility of such systems within state agencies; (4) Recommend and coordinate the use and application of state agencies' information technology and telecommunications resources; (5) Review and approve large-scale information technology and telecommunications projects for state agencies including, but not limited to, risk assessment methodologies used by state agencies using authority risk assessment criteria; (6) Review state agencies' compliance with statewide information technology and telecommunications systems plans; (7) Recommend cost-efficient procedures for state agencies' acquisition and procurement of information technology and telecommunications systems; (8) Upon request, provide technical expertise to state government and any other governmental entity;

(9) Maintain a continuous and comprehensive inventory of information technology and telecommunications systems within state agencies; (10) In accordance with statutes governing the availability or confidentiality of public records and information, establish guidelines for the accessing of public information by the public; (11) On an annual basis, publish a report of the activities of the authority for the governor and the legislature; (12) Recommend the enactment or promulgation of any statutes or rules necessary to carry out the statewide information technology and telecommunications systems plans; (13) Enter into contracts for professional services and assistance not otherwise available in state government;

(14) Encourage and promote cooperative information technology efforts and activities between the state, local government, private enterprise and the public; (15) Encourage and support education and training opportunities relating to information technology and telecommunications; and (16) Appoint subcommittees, delegate responsibilities and perform any additional functions consistent with the purpose of this act which are necessary and appropriate for the proper conduct of the authority.

History.

I.C., § 67-833, as added by 2018, ch. 258, § 8, p. 609.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in subsection (16) refers to S.L. 2018, Chapter 258, which is codified as §§ 67-827 through 67-837.

§ 67-834. Definitions. — As used in sections 67-835, 67-836 and 67-837, Idaho Code:

(1) “Geographic information” means data and datasets containing location information including, but not limited to, remotely sensed imagery, global positioning systems files, geospatially referenced computer-aided design files, digital cartographic products, spatially enabled databases, and geospatial datasets locating and describing features and their attributes on, above or under the earth.

(2) “Geographic information systems” or “GIS” means an information system capable of capturing, integrating, storing, editing, analyzing, managing, sharing, and displaying geographic information. A GIS involves computer hardware, software, networks and applications, as well as the people to operate, develop, administer and use them.

(3) “Metadata” means a description of the quality, currency, attributes, methods and other salient aspects of geographic and tabular information.

(4) “State agency” means all state agencies or departments, boards, commissions, councils and institutions of higher education but shall not include the elected constitutional officers and their staffs, the legislature and its staffs or the judiciary.

History.

I.C., § 67-834, as added by 2018, ch. 258, § 9, p. 609.

STATUTORY NOTES

Compiler’s Notes.

This section is similar to § 67-5779, which was repealed by S.L. 2018, ch. 258, § 18, effective July 1, 2018.

§ 67-835. Integrated property records system — Transfer of responsibility. — The office of information technology services shall:

(1) Take possession and control of the state's integrated property records system previously created pursuant to [section 58-330, Idaho Code](#); (2) Manage the state's integrated property records system; (3) Lead the establishment of a standard format, workflow and technical procedures to permit updating of the integrated property records system with geographic and other relevant data and information received from state agencies; and (4) Lead the planning and deployment of multiagency enterprise use of the integrated property records system.

History.

[I.C., § 67-835](#), as added by 2018, ch. 258, § 10, p. 609.

STATUTORY NOTES

Cross References.

Office of information technology services, § 67-827.

Compiler's Notes.

Section 58-330, referred to in subsection (1), was enacted by S.L. 2000, ch. 117, § 1 and repealed by S.L. 2008, ch. 332, § 1.

This section is similar to § 67-5780, which was repealed by S.L. 2018, ch. 258, § 18, effective July 1, 2018.

§ 67-836. Agencies to provide records and data. — (1) Every state agency shall, no later than January 15, 2009, provide records in an electronic format acceptable to the department of administration of all interests in any real property owned, used or granted by it including, without limitation, records of ownership, leases, encumbrances, easements, rights-of-way leases or any other interest in real property. On and after July 1, 2018, and on a regular and continuous basis thereafter, every state agency shall update such records and provide any new records to the office of information technology services. Metadata will accompany all state agency records.

(2) For the purposes of this section, the Idaho transportation department shall provide highway right-of-way records from January 1, 2002, forward, augmented thereafter each time real property owned by the state of Idaho is affected as part of the Idaho transportation department's regular course of business.

(3) For the purposes of this section, state agencies shall provide only records and geographic information that are subject to disclosure under chapter 1, title 74, Idaho Code, or that the agency has determined to disclose as a public record.

History.

I.C., § 67-836, as added by 2018, ch. 258, § 11, p. 609.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Office of information technology services, § 67-827.

Transportation department, § 40-501 et seq.

Compiler's Notes.

This section is similar to § 67-5781, which was repealed by S.L. 2018, ch. 258, § 18, effective July 1, 2018.

§ 67-837. Responsibility for quality. — In regard to any obligation on any state agency or other entity to provide records to the office of information technology services pursuant to section 67-835 or 67-836, Idaho Code, the obligation for quality remains with the originator and does not transfer to the office of information technology services by virtue of its receipt or by integration or other use of such records.

History.

I.C., § 67-837, as added by 2018, ch. 258, § 12, p. 609.

STATUTORY NOTES

Cross References.

Office of information technology services, § 67-827.

Compiler's Notes.

This section is similar to § 67-5782, which was repealed by S.L. 2018, ch. 258, § 18, effective July 1, 2018.

Chapter 9

SECRETARY OF STATE

Sec.

67-901. Custody of records.

67-902. Custodian of printed bills and amendments introduced in both houses.

67-903. Duties of secretary of state.

67-904. Joint publishing committee — Publication and distribution of session laws. [Repealed.]

67-905. Report of joint publishing committee. [Repealed.]

67-906. Electronic filing system — Requirements — Rules.

67-907. Books distributed to officers — Property of state. [Repealed.]

67-908. Expenses of distribution — Audit and payment. [Repealed.]

67-909. Distribution of statutes to members of legislature.

67-910. Fees of secretary of state.

67-911. Fee for filing articles of nonprofit corporations. [Repealed.]

67-912. Official bond.

67-913. Proposed constitutional amendment.

67-914. Records infrequently used having official value — Removal.

67-915. Idaho Blue Book.

67-916. Democracy fund.

§ 67-901. Custody of records. — The secretary of state is charged with the custody:

1. Of all acts and resolutions passed by the legislature.
2. Of the journals of the legislature.
3. Of the great seal.
4. Of all books, records, deeds, parchments, maps and papers, kept or deposited in his office pursuant to law.
5. Of all executive orders issued by the governor pursuant to the provisions of [section 67-802, Idaho Code](#).

History.

R.S., § 190; reen. R.C. & C.L., § 94; C.S., § 132; I.C.A., § 65-801; am. 1974, ch. 5, § 3; p. 23.

STATUTORY NOTES

Cross References.

Board of examiners, member of, Idaho [Const., Art. IV, § 18](#).

Community college districts, oath of trustees to be filed with, § 33-2106.

Entity filings in office of, § 30-21-201.

Great seal, § 59-1005.

Initiative and referendum petitions, duties of, § 34-1801 et seq.

Loyalty oath, § 59-401.

Oaths and affirmations, administration by, § 9-1401.

Presidential election, certificate of election, § 34-1501.

State board of canvassers, member of, § 34-1211.

CASE NOTES

Legislative Journal.

This section places no obligation upon secretary with respect to legislative journal, except to receive same from clerk and record it. *Burkhart v. Reed*, 2 Idaho 503, 22 P. 1 (1889), *aff'd*, *Clough v. Curtis*, 134 U.S. 361, 10 S. Ct. 573, 33 L. Ed. 945 (1890).

Cited *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948); *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959).

§ 67-902. Custodian of printed bills and amendments introduced in both houses. — At the close of each session, general or special, of the legislature of the state of Idaho the secretary of the senate and the chief clerk of the house of representatives shall compile and certify true and correct printed copies of all printed bills and all amendments thereto introduced in their respective houses and file such printed copies with the secretary of state of the state of Idaho. The secretary of state shall retain the custody of such printed bills and amendments thereto and the same shall constitute official records of the state of Idaho.

History.

1947, ch. 14, § 1, p. 14.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1947, ch. 14 declared an emergency. Approved February 5, 1947.

CASE NOTES

Cited *Worthen v. State*, 96 Idaho 175, 525 P.2d 957 (1974).

§ 67-903. Duties of secretary of state. — 1. To keep a register of and file and attest the official acts of the governor, including all executive orders issued by him pursuant to the provisions of section 67-802, Idaho Code.

2. To affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required.

3. To record in proper books all conveyances made to the state, and all articles of incorporation of domestic corporations filed in his office.

4. To receive and record in proper books the official bonds of all the officers whose bonds are required to be filed with him.

5. To take and file in his office receipts for all books distributed by him.

6. To furnish on demand to any person paying the fees therefor a certified copy of all, or any part, of any law, record, or other instrument filed, deposited, or recorded in his office.

7. To present to the legislature, at the commencement of each session thereof, a full account of all purchases made and expenses incurred by him on account of the state.

8. To designate each act of the legislature which has become a law by its appropriate chapter number.

9. To promulgate in accordance with chapter 52, title 67, Idaho Code, such rules and regulations as he deems necessary or proper in the performance of his duties.

History.

First seven subds. R.S., § 191; compiled and reen. R.C., § 95; reen. 1909, p. 364; am. 1913, ch. 141, § 1, p. 502; reen. C.L., § 95. Third subd. compiled and reen. C.L., § 95. Eighth subd. 1911, ch. 59, § 1, p. 159; reen. C.L., § 95. Ninth subd. based upon 1909, p. 358; 1913, ch. 10, § 1, p. 49; 1913, ch. 141, § 1, subds. 8, 9, p. 502; compiled and reen. C.L., § 95; C.S., § 133. Ninth subd. repealed by 1931, ch. 162, § 3, p. 274; I.C.A., § 65-802; am. 1974, ch. 5, § 4, p. 23; am. 1977, ch. 252, § 16, p. 738.

STATUTORY NOTES

Cross References.

Ballots for general elections, designing, § 34-906.

Designation of legislative acts with chapter numbers, § 67-506.

Independent presidential electors, certification, § 34-711A.

Statutory agent under workmen's compensation law for employers with no place of business in state, §§ 72-321, 72-735.

CASE NOTES

Refusal to issue commission.

Signed bills unalterable.

Refusal to Issue Commission.

Secretary of state may refuse to issue commission of appointment to a person not authorized by law to fill the same. *Ingard v. Barker*, 27 Idaho 124, 147 P. 293 (1915).

Signed Bills Unalterable.

When a bill, properly certified by the presiding officers of the two houses of the legislature, was presented to the governor and was approved and signed by him, no amendment or alteration of the bill so signed and approved could be made. *Katerndahl v. Daugherty*, 30 Idaho 356, 164 P. 1017 (1917).

§ 67-904. Joint publishing committee — Publication and distribution of session laws. [Repealed.]

Repealed by S.L. 2018, ch. 236, § 1, effective July 1, 2018. For present comparable provisions, see § 67-509.

History.

I.C., § 67-904, as added by 2015, ch. 329, § 2, p. 1254.

STATUTORY NOTES

Prior Laws.

Former § 67-904, Publication and distribution of laws — Procedure — Duties of joint printing committee, which comprised Based upon R.C., § 95, as am. 1909, p. 364, and 1913, ch. 141, § 1, p. 503, and upon R.C., § 96, subd. 6; 1909, p. 358; 1913, ch. 12, § 1, p. 49; compiled and reen. C.L., § 95a; C.S., § 134; am. 1923, ch. 78, § 1, p. 89; am. 1925, ch. 77, § 1, p. 110; am. 1927, ch. 175, § 1, p. 223; am. 1931, ch. 162, § 1, p. 274; I.C.A., § 65-803; am. 1933, ch. 204, § 1, p. 397; am. 1963, ch. 17, § 1, p. 151; am. 1972, ch. 231, § 1, p. 610; am. 1974, ch. 5, § 5, p. 23; am. 1993, ch. 216, § 99, p. 587, was repealed by S.L. 2015, ch. 329, § 1, effective July 1, 2015.

§ 67-905. Report of joint publishing committee. [Repealed.]

Repealed by S.L. 2018, ch. 236, § 2, effective July 1, 2018. For present comparable provisions, see § 67-509.

History.

I.C., § 67-905, as added by 2015, ch. 329, § 3, p. 1254.

STATUTORY NOTES

Prior Laws.

Former § 67-905, Joint printing committee, which comprised 1931, ch. 162, § 4, p. 274; I.C.A., § 65-804; am. 1972, ch. 231, § 2, p. 610; am. 1977, ch. 232, § 2, p. 687, was repealed by S.L. 2015, ch. 329, § 1, effective July 1, 2015.

§ 67-906. Electronic filing system — Requirements — Rules. — (1)

The secretary of state may develop and implement a statewide electronic filing system to accommodate the electronic filing of records and documents that are required to be filed in the office of the secretary of state. If the secretary of state develops and implements a statewide electronic filing system under this section:

(a) The secretary of state shall establish a central database for all records and documents filed electronically with the secretary of state;

(b) The secretary of state may require users of the system to provide personal information, such as a user email address, physical address, or phone number, in order for the user to create an account from which the user can access the statewide electronic filing system. Such personal information gathered by the secretary of state for user account purposes shall be exempt from public disclosure as outlined in [section 74-106\(34\), Idaho Code](#);

(c) The secretary of state may adopt rules that:

(i) Provide procedures for entering data;

(ii) Provide security and protection of information in the system and monitor the database and other components of the system to ensure that unauthorized entry is prevented;

(iii) Require standardized information for entry into the system;

(iv) Prescribe an identification procedure for a person filing records or other documents or otherwise accessing the system; and

(v) Require each individual who is required to sign a document that is filed electronically to be specifically identified as acknowledging the document and giving assent to the electronic filing through an identification procedure unique to that individual.

(d) All records filed and recorded in the statewide electronic filing system are subject to the same requirements as if those records had been filed in paper form, subject to the provisions of the uniform electronic transactions act, chapter 50, title 28, Idaho Code.

(2) All persons filing records in any type of electronic filing system established by the secretary of state are subject to the same civil and criminal penalties applicable to a person who would otherwise file the same record in a nonelectronic format.

History.

I.C., § 67-906, as added by 2017, ch. 146, § 1, p. 352.

STATUTORY NOTES

Prior Laws.

Former § 67-906, Distribution of session laws and journals, which comprised R.S., § 192; reen. R.C., § 96; compiled and reen. C.L., § 96; C.S., § 135; am. S.L. 1931, ch. 162, § 2, p. 274; I.C.A., § 65-805; am. S.L. 1935, ch. 43, § 1, p. 79; am. S.L. 1953, ch. 184, § 1, p. 295; am. S.L. 1972, ch. 231, § 3, p. 610; am. S.L. 1977, ch. 232, § 3, p. 687; am. S.L. 2001, ch. 51, § 1, p. 93, was repealed by S.L. 2015, ch. 329, § 1, effective July 1, 2015. For present comparable provisions, see § 67-509.

**§ 67-907. Books distributed to officers — Property of state.
[Repealed.]**

Repealed by S.L. 2015, ch. 329, § 1, effective July 1, 2015.

History.

R.S., § 194; compiled and reen. R.C., § 97; reen. C.L., § 97; C.S., § 136; I.C.A., § 65-806; am. 1977, ch. 232, § 4, p. 687; am. 2001, ch. 51, § 2, p. 93.

**§ 67-908. Expenses of distribution — Audit and payment.
[Repealed.]**

Repealed by S.L. 2015, ch. 329, § 1, effective July 1, 2015.

History.

R.S., § 195; compiled and reen. R.C., § 98; compiled and reen. C.L., § 98; C.S., § 137; I.C.A., § 65-807.

STATUTORY NOTES

Compiler's Notes.

S.L. 2015, ch. 244, § 44 purported to amend this section, however S.L. 2015, ch. 329, § 1 repealed this section, effective July 1, 2015.

§ 67-909. Distribution of statutes to members of legislature. — The secretary of state is hereby empowered and directed to distribute the bound volumes and current pocket parts of the compiled statutes of Idaho to members of any legislature, when called for by proper action taken by either house, or by joint action of both; such copies shall be free from any mark or marks indicating that they are the property of the state and shall become the property of the member to whom delivered. Not more than one (1) set of bound volumes of the compiled statutes shall ever be distributed at state expense to any member of the legislature. All costs incurred in providing bound volumes of the compiled statutes to members of the legislature shall be a proper charge against the legislative fund [legislative account], unless an appropriation for such purpose has been made. Sets of pocket parts shall be provided to currently serving members of the legislature, and such sets shall be provided from the sets made available by the provisions of section 73-212, Idaho Code.

History.

1921, ch. 1, § 1, p. 3; I.C.A., § 65-808; am. 1977, ch. 232, § 5, p. 687; am. 2015, ch. 329, § 4, p. 1254.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 329, deleted “session laws and” preceding “statutes” in the section heading and deleted “certified copies of the session laws and” following “to distribute” near the beginning of the first sentence.

Compiler’s Notes.

The bracketed insertion near the end of the third sentence was added by the compiler to correct the name of the referenced account. See § 67-451.

CASE NOTES

Cited *Koon v. Bottolfsen*, 66 Idaho 771, 169 P.2d 345 (1946).

§ 67-910. Fees of secretary of state. — (1) The secretary of state, for services performed in his office, shall charge and collect the following fees:

- (a) For a copy of any law, resolution, record or other document or paper on file in his office, twenty-five cents (25¢) per page.
- (b) For affixing certificate and seal of the state, ten dollars (\$10.00).
- (c) For filing and indexing any map or other paper where the fee for the same is not already fixed by law, four dollars (\$4.00).
- (d) For searching legislative journals for records of enacted and reenacted laws, and certifying to the same, ten dollars (\$10.00).
- (e) For certifying and attaching certificate to any state law, published in pamphlet form, which shall include comparing the same with the enrolled act, ten dollars (\$10.00).
- (f) For any other certificate required of the secretary of state, the fee for which is not hereinbefore prescribed, ten dollars (\$10.00).
- (g) For provision of electronic access to databases and provision of other automated data services, such fees as the secretary of state may require by duly promulgated administrative rule.

(2) The secretary of state may enter into agreements with private companies to provide access to services for which a fee is collected in accordance with subsection (1)(g) of this section. Such agreements may provide for the private company to collect the prescribed fee and remit such fee to the state treasurer on behalf of the secretary of state. The private company may also charge and collect a reasonable additional fee for its services.

(3) For all services not hereinbefore provided for, the secretary of state shall charge and collect such fees therefor as may now be provided by law, or as may be prescribed by the state board of examiners.

(4) No member of the legislature or state officer may be charged for any search relative to matters connected to the duties of their offices; nor may

they be charged any fee for a certified copy of any law or resolution passed by the legislature relating to their official duties.

(5) In his discretion, the secretary of state may grant to persons, without charge, access to files in his office for the purpose of making copies if a benefit to his office will thereby be obtained.

(6) In the secretary of state's discretion, a business entity filing may be deleted from the secretary of state's files if the payment for the filing is not completed in a timely manner.

History.

R.S., § 196; am. 1901, p. 141, § 1; am. 1907, p. 215, § 1, reen. R.C. & C.L., § 99; C.S., § 138; I.C.A., § 65-809; am. 1955, ch. 153, § 1, p. 299; am. 1973, ch. 319, § 1, p. 683; am. 1977, ch. 252, § 17, p. 738; am. 1979, ch. 105, § 5, p. 251; am. 1988, ch. 236, § 1, p. 464; am. 1992, ch. 158, § 1, p. 512; am. 1993, ch. 338, § 4, p. 1268; am. 2002, ch. 124, § 1, p. 348.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

State treasurer, § 67-1201 et seq.

Veterans exempt from payment of fees in certain matters, § 65-301 et seq.

Effective Dates.

Section 2 of S.L. 1955, ch. 153 declared an emergency. Approved March 12, 1955.

Section 2 of S. L. 1973, ch. 319 declared an emergency. Approved March 17, 1973.

Section 2 of S.L. 1988, ch. 236 declared an emergency. Approved March 29, 1988.

CASE NOTES

Cited Allen Steel Supply Co. v. Bradley, 89 Idaho 29, 402 P.2d 394 (1965).

§ 67-911. Fee for filing articles of nonprofit corporations. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section which comprised S.L. 1907, p. 451, § 1; reen. R.C. & C.L., § 100; C.S., § 139; I.C.A., § 65-810; am. 1955, ch. 152, § 1, p. 298; am. 1977, ch. 252, § 18, p. 738 was repealed by S.L. 1979, ch. 105, § 6.

§ 67-912. Official bond. — The secretary of state must be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

History.

R.S., § 197; am. R.C., § 101; reen. C.L., § 101; C.S., § 140; I.C.A., § 65-811; am. 1971, ch. 136, § 39, p. 522.

§ 67-913. Proposed constitutional amendment. — Whenever the legislature shall have directed the submission of a proposal to amend the constitution of the state of Idaho to the electors, the secretary of state shall provide for the publication of the statement of meaning and purpose, and the presentation of major arguments submitted by the legislative council, as well as the text of the proposed amendment. The information shall be published three (3) times, the first time to be not more than six (6) weeks preceding the election and the last time to be not more than seven (7) days preceding the election, in each newspaper qualified to print legal notices as defined in section 60-106, Idaho Code.

History.

I.C., § 67-913, as added by 1976, ch. 235, § 2, p. 827.

STATUTORY NOTES

Cross References.

Legislative council, duties regarding, § 67-453.

CASE NOTES

Cure of Procedural Defects.

Where the materials published concerning proposed constitutional amendments sufficiently set forth the purpose and effect of the amendments to inform the public of the content, the statements of meaning and purpose sufficiently described the effect and impact of the proposed amendments, and the statements for and against them adequately reflected the principal arguments espoused by proponents and opponents, alleged procedural defects were cured by the election. *Idaho Watersheds Project v. State Bd. of Land Comm'rs*, 133 Idaho 55, 982 P.2d 358 (1999).

§ 67-914. Records infrequently used having official value — Removal. — Records filed with the secretary of state having an official value, but which are used infrequently, may, on order of the state board of examiners, be removed from the office of the secretary of state to any suitable place of storage.

History.

I.C., § 67-914, as added by 1977, ch. 209, § 1, p. 575.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

§ 67-915. Idaho Blue Book. — (1) The secretary of state shall compile and issue biennially an official directory of all state officers, state institutions, boards, commissions, and county officers of the state, to be known as the Idaho Blue Book, and include therein the information regarding their functions that the secretary of state considers most valuable to the people of the state, together with such other data and information as usually is included in similar publications.

(2) The secretary of state may distribute the Idaho Blue Book free of charge, under such regulations as the secretary of state may establish, to schools and to federal, state, county, and city officials of the state of Idaho. The copies distributed under this subsection shall not be sold.

The secretary of state shall determine a reasonable price, and charge such price, for each copy of the Idaho Blue Book distributed to the general public. The secretary of state may also establish a discount price for dealers in order to maintain a uniform price.

History.

I.C., § 67-915, as added by 1984, ch. 15, § 1, p. 17.

§ 67-916. Democracy fund. — (1) There is hereby created in the state treasury in the office of the secretary of state the “Democracy Fund.” The purpose of the democracy fund is to provide funding for carrying out the activities for which payments are made to the state under the federal help America vote act of 2002 (P.L. 107-252) including, but not limited to:

(a) Establishing and maintaining accurate lists of eligible voters; (b) Encouraging eligible voters to vote;

(c) Improving verification and identification of voters at the polling place; (d) Improving equipment and methods for casting and counting votes; (e) Recruiting and training election officials and poll workers; (f) Improving the quantity and quality of available polling places; (g) Educating voters about their rights and responsibilities; (h) Assuring access for voters with physical disabilities; (i) Carrying out other activities to improve the administration of elections in the state.

(2) The democracy fund shall consist of all moneys appropriated by the legislature, federal moneys that may be available for the purpose of improving Idaho’s election system, county matching funds and funds from any other source.

(3) All interest earned on the investment of idle moneys in the fund by the state treasurer shall be returned to the fund.

(4) Moneys deposited in, or remitted to, the democracy fund are continuously appropriated to the secretary of state for the purpose of paying the expenses of carrying out the activities for which payments are made to this state under the federal help America vote act of 2002 (P.L. 107-252).

History.

I.C., § 67-916, as added by 2002, ch. 237, § 1, p. 709; am. 2003, ch. 48, § 15, p. 181.

STATUTORY NOTES

Prior Laws.

Former § 67-916, which comprised **I.C., § 67-916**, as added by 1996, ch. 218, § 4, p. 718., was repealed by S.L. 2000, ch. 152, § 1, effective July 1, 2000.

Another former § 67-916 which comprised **I.C., § 67-916**, as added by 1992, ch. 166, § 1, p. 530; am. 1994, ch. 180, § 174, p. 420; am. 1995, ch. 163, § 1, p. 643; was repealed by S.L. 1996, ch. 218, § 3, effective January 1, 1997.

Federal References.

The help America vote act of 2002 (**P.L. 107-252**), referred to in the introductory paragraph of (1) and in subsection (4), is codified as **52 U.S.C.S. § 20901 et seq.**

Compiler's Notes.

The reference cite enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2002, ch. 237 declared an emergency. Approved March 22, 2002.

Section 16 of S.L. 2003, ch. 48 declared an emergency. Approved March 13, 2003.

Chapter 10

STATE CONTROLLER

Sec.

67-1001. Duties of controller.

67-1001A. Definitions.

67-1002. Prescribing forms or requirements — Penalty for dereliction.

67-1003. Appropriation necessary to authorize warrant.

67-1004. Certified copies of documents as evidence.

67-1005. Official bond.

67-1006. Appointment of deputy.

67-1007. State officers and custodians of state funds — Examination.

67-1008. State controller to report delinquent collectors.

67-1009 — 67-1018. [Amended and Redesignated.]

67-1019, 67-1020. Employment of experts — Appropriation for expenses.
[Repealed.]

67-1021. Authority to install accounting and reporting system for state.

67-1021A. Business information infrastructure project.

67-1021B. Business information infrastructure governance.

67-1021C. Business information infrastructure fund.

67-1022. Warrants, how drawn — Lost warrants.

67-1023. Claims against the state.

67-1024. Regulating claims requiring payment in advance.

67-1025. Account of endowment funds, how kept.

67-1026. Offsetting obligations and making necessary entries.

67-1027. Authority to recognize assignments of obligations owing by state.

67-1028 — 67-1030. [Amended and Redesignated.]

67-1031. Funds created by regents of University of Idaho and state board of education — State controller to keep records.

67-1032. [Amended and Redesignated.]

67-1033. Annual report to governor — Contents. [Repealed.]

67-1034, 67-1035. [Amended and Redesignated.]

67-1036. Administration of accounting system. [Repealed.]

67-1037 — 67-1040. [Reserved.]

67-1041. Vouchers and accounts preserved.

67-1042. Inspection of controller's books by legislature.

67-1043 — 67-1050. [Reserved.]

67-1051. Proceedings against defaulters.

67-1052. Refusal to make returns and exhibits — Penalty.

67-1053. Obstructing or misleading state controller — Penalty.

67-1054. State treasurer a defaulter — Report to governor — Removal from office.

67-1055. County treasurer a defaulter — Report to county commissioners — Removal from office.

67-1056. Report of examination to governor — Action against delinquent official.

67-1057 — 67-1080. [Reserved.]

67-1081. Submission of annual financial statement to state controller by all taxing units of government — Policies.

67-1082. Financial statement — Form.

67-1083. Failure to submit financial statement — Penalty.

67-1084. Duties of officers to assist state controller.

§ 67-1001. Duties of controller. — It is the duty of the state controller:

(1) To superintend the fiscal concerns of the state, with its accounting, informational, payroll, and related data processing services.

(2) To deliver to the governor and the legislative services office on or before the first day of January, a financial statement, which complies with generally accepted accounting principles, of the funds of the state, its revenues, and of the public expenditures during the preceding fiscal year.

(3) When requested, to give information in writing to either house of the legislature relating to the fiscal affairs of the state or the duties of his office.

(4) To suggest plans and provide internal control standards for the improvement and management of the public revenues, assets, expenditures and liabilities.

(5) To keep and state all accounts in which the state is interested.

(6) To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specified appropriation, showing at all times the unexpended balance of such appropriation.

(7) To keep an account between the state and the treasurer, and therein charge the treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him.

(8) To keep a register of warrants, showing the fund or funds upon which they are drawn, the number, in whose favor, the appropriation applicable to the payment thereof, and when the liability accrued.

(9) To examine and settle the accounts of all persons indebted to the state.

(10) In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

(11) To require all persons who have received any moneys belonging to the state and have not accounted therefor to settle their accounts.

(12) To account for the collection of all moneys due the state, not the responsibility of any other agency and institute suits in its name for all official delinquencies in relation to assessment, collection and payment of the revenue, and against persons who by any means have become possessed of public money or property and fail to pay over or deliver the same, and against all debtors of the state, of which suits the courts of Ada County have jurisdiction, without regard to the residence of the defendants.

(13) To draw warrants on the treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law.

(14) To furnish the state treasurer with a daily total dollar amount, by fund, and/or account when requested by the state treasurer, of warrants drawn upon the treasury.

(15) To authenticate with his signature, his electronic signature, or his facsimile signature all warrants drawn by him, and all copies of official documents issued from his office.

(16) To charge the state treasurer with money and evidences of indebtedness received from and credit him for money drawn by the state board of land commissioners in the moneys or accounts over which said board has control.

(17) To act ex officio as member of the [state] board of canvassers and state board of land commissioners, secretary of the state board of examiners, and participant in other organizations in the performance of such duties as prescribed by law for such officer.

(18) To create and establish such divisions and other administrative units within the office as necessary.

History.

(See 1865, p. 190, §§ 3, 4) R.S., § 205; 1899, p. 254; 1903, p. 149 (R.C., §§ 279-281); 1905, p. 386 (R.C., §§ 170-188); first 17 subds. compiled and reen. R.C., § 102; reen. C.L., § 102. Eighteenth subd. based upon 1909, p. 360, especially § 3; compiled and reen. C.L., § 102, subd. 18, Nineteenth subd., 1913, ch. 15, § 1, p. 55; reen. C.L., § 102, subd. 19. Twentieth subd., 1913, ch. 111, § 1, p. 431; reen. C.L., § 102, subd. 20 repealed by 1919, ch. 8, p. 43; C.S., § 141; am. 1929, ch. 239, § 1, p. 463; I.C.A., § 65-901; am.

1976, ch. 42, § 7, p. 90; am. 1977, ch. 223, § 1, p. 667; am. 1978, ch. 68, § 1, p. 137; am. 1980, ch. 84, § 1, p. 183; am. 1994, ch. 181, § 7, p. 575; am. 2003, ch. 4, § 1, p. 7.

STATUTORY NOTES

Cross References.

Classification and reporting of receipts and warrant disbursements, § 67-1101 et seq.

Costs when state a party to action, § 12-118.

Fish and game licenses, deposit of funds with state treasurer, § 36-107.

Legislative services office, § 67-701 et seq.

Loyalty oath, § 59-401 et seq.

Presidential electors, payment of compensation, § 34-1507.

State board of canvassers, member of, § 34-1211.

State board of examiners, § 67-2001 et seq.

State board of land commissioners, Idaho [Const., Art. IX, § 7](#) and [§ 58-101](#) et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The name of this chapter was changed from “State Auditor” to “State Controller” since the proposed amendment to the Idaho Constitution to change the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held November 8, 1994 and became effective January 2, 1995.

The bracketed insertion near the beginning of subsection (17) was added by the compiler to correct the name of the referenced board. See § 34-1211.

Section 12 of S.L. 1939, ch. 113, which proposed to transfer the powers and duties of the auditor as secretary of the state board of examiners as set out in this section and § 67-1008 (now § 67-1023) to the comptroller of the

state of Idaho, was declared unconstitutional by *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Effective Dates.

Section 2 of S.L. 1929, ch. 239 declared an emergency. Approved March 16, 1929.

Section 7 of S.L. 1980, ch. 84 declared an emergency. Approved March 19, 1980.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 7 became effective January 2, 1995..

CASE NOTES

Attorney fees.

Insufficient funds.

Necessity of appropriation.

Parties defendant.

Post-audit functions.

“Treasurer” to be read “auditor.”

Venue of suits.

Attorney Fees.

Attorney performing legal services for the state insurance fund was not an employee of the state within the meaning of the standard appropriations act. His relationship to the fund was that of attorney and client, on a fee basis which made him an independent contractor. Such fees were not a part of the overhead administrative expenses of the fund and, hence, were not payable out of the appropriation made for the payment of such expenses. *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Insufficient Funds.

Auditor may draw warrant on adjutant general's contingent fund to pay expenses incurred when governor proclaimed martial law, although there was not sufficient money in said fund to pay such warrants. *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931).

Necessity of Appropriation.

No warrant can issue to pay claim, even though allowed by board of examiners, until legislature has made appropriation to cover same. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

Claimant has no right to writ of mandate directing auditor to draw warrant, unless it appears that there is money in treasury appropriated for that purpose. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

Parties Defendant.

In action against county treasurer under subdivision 13 [now (12)] of this section, his county is not a necessary party to action. *State v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

Post-Audit Functions.

Since the territorial controller was authorized to perform all the types of audits which were performed in the territory prior to statehood, the controller was charged with superintending the fiscal concerns of the territory and the controller was expressly directed to perform certain post-audit functions, the territorial controller would have been authorized to perform a modern post-audit function under Idaho *Const., Art. IV, § 1*, should that function have been in use at the time. Therefore, since the state auditor has implied constitutional powers and duties equivalent to those of

the territorial controller, performing the post-audit function is a constitutional duty of the state auditor. *Williams v. State Legislature*, 111 Idaho 156, 722 P.2d 465 (1986).

“Treasurer” to Be Read “Auditor.”

Under a statute creating the fruit and vegetable advertising commission and levying tax on fruits and vegetables produced within the state, the provision that the state “treasurer” should issue warrants for salaries and expenses was a mere clerical error and could be interpreted as “auditor,” the word intended by the legislature. For the treasurer to both draw and pay warrants would contravene the state’s established system of checks and balances. *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

Venue of Suits.

Use of word “jurisdiction” in subdivision 13 [now (12)] of this section, when whole provision is read together, is construed to mean “venue.” *State v. Jones*, 34 Idaho 83, 199 P. 645 (1921).

Action against public officer to recover money collected by him is properly instituted in county designated by this section and there is no error in denying change of venue. *State v. Jones*, 34 Idaho 83, 199 P. 645 (1921); *State v. Cleland*, 42 Idaho 803, 248 P. 831 (1926).

Cited *State ex rel. Parsons v. Bunting Tractor Co.*, 58 Idaho 617, 77 P.2d 464 (1938).

§ 67-1001A. Definitions. — As used in this chapter and other applicable sections of Idaho Code, each of the terms defined in this section shall have the meaning herein given unless a different meaning is clearly required by the context.

(1) “Certification” means a written or electronic assertion that a statement or report is true or as represented.

(2) “Defaulter” means one who misappropriates public funds held by him in any official or fiduciary capacity; or fails to provide an accounting as specified by the state controller for such funds.

(3) “Examine” means open to inspection; to review or evaluate the books, papers, accounts, bills, vouchers, other documents of state funds and property, or accounts or financial records of all state agencies and entities receiving state funds in accordance with generally accepted accounting practices.

(4) “Financial statement” means a quantitative report summarizing the financial position of an entity as of a particular date and the operating results of that entity for a particular period.

(5) “Internal control” means a coordinated system of methods and measures designed to safeguard assets, check the accuracy and reliability of accounting data, promote operational efficiency, and encourage adherence to prescribed managerial policies.

(6) “Offset” means to withhold payment, in full or part, from a recipient of state money whenever that recipient has an outstanding debt to the state.

(7) “Post-audit” means an independent audit of the financial statements of the state of Idaho for purposes of rendering an opinion of such statements in conformity with generally accepted accounting principles.

(8) “Voucher” means a receipt, acquittance or release in writing or electronic transmission that may serve as evidence of payment or discharge of debt; a document that serves to recognize a liability and authorize the disbursement of cash.

(9) “Warrant” means a negotiable instrument payable by the state treasury when funds become available for the stated purpose; a warrant may include, but is not necessarily limited to, a payment mechanism such as direct deposit, electronic fund transfer, paper warrant or other financial instrument.

History.

I.C., § 67-1001A, as added by 2003, ch. 4, § 2, p. 7.

§ 67-1002. Prescribing forms or requirements — Penalty for dereliction. — It is the duty of the state controller to prescribe the form or style of receipts which must be given by all officers, or their deputies, who are authorized by law to collect fees, license moneys, fines and forfeitures, or to impose penalties, and to prescribe the forms or requirements of reports which must be made by all such officers, or their deputies, to the state treasurer and the state controller whenever public money is deposited by them; the object of this provision being to afford the state controller the means of ascertaining whether or not there has been a proper accounting for all moneys collected on behalf of the state.

Forms or requirements of prescribed receipts and reports shall be provided and paid for by the department in which they are to be used.

For failure to perform the duty imposed upon him by this section, the state controller shall forfeit the sum of one thousand dollars (\$1,000) to be collected on his official bond.

History.

Based upon 1913, ch. 42, §§ 6-8, p. 146; compiled and reen. C.L., § 104a; C.S., § 144; I.C.A., § 65-904; am. 1976, ch. 42, § 8, p. 90; am. and redesisg. 1994, ch. 181, § 8, p. 575.

STATUTORY NOTES

Cross References.

Disposition of forfeitures, § 19-4705.

Failure to use prescribed form of report suspends salary, § 59-506.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-1002, which comprised R.S., § 206; reen. R.C. & C.L., § 103; C.S., § 142; I.C.A., § 65-902, was repealed by S.L. 1994, ch. 181, § 6, effective January 2, 1995, since the amendment to the Constitution of the State of Idaho [1994 S.J.R. 109, p. 1493] to change the name of the state

auditor to state controller was adopted at the general election held November 8, 1994.

Compiler's Notes.

This section was formerly compiled as § 67-1004.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 8 was effective January 2, 1995.

CASE NOTES

Cited *Steunenberg v. Storer*, 6 Idaho 44, 52 P. 14 (1898).

§ 67-1003. Appropriation necessary to authorize warrant. — In all cases of specific appropriations, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the state, when examined, the state controller must draw warrants upon the treasury for the amount; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrants must be drawn by the state controller, or paid by the treasurer, until appropriation is made by law for that purpose, nor must the whole amount drawn for and paid for any purpose or under any one (1) appropriation ever exceed the amount appropriated, or the cash balance in the account charged, whichever is less. For the purposes of this section, the cash balance in the benefit account established in section 72-1346, Idaho Code, shall be deemed to be the cash balance in the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the social security act, as amended.

History.

1865, ch. 190, § 10; R.S., § 214; am. R.C., § 111; reen. C.L., § 111; C.S., § 151; I.C.A., § 65-910; am. 1976, ch. 42, § 12, p. 90; am. 1985, ch. 156, § 1, p. 415; am. and redesign. 1994, ch. 181, § 9, p. 575; am. 1998, ch. 1, § 104, p. 3.

STATUTORY NOTES

Cross References.

Employment security fund, § 72-1346.

No money shall be drawn from the treasury except pursuant to appropriation, [Const., Art. 7, § 13](#).

State treasurer, § 67-1201 et seq.

Compiler's Notes.

Former § 67-1003 was amended and redesignated as § 67-1025 by S.L. 1994, ch. 181, § 19, effective January 2, 1995.

This section was formerly compiled as § 67-1011.

Federal References.

Section 904 of the social security act, referred to in the last sentence of this section, is compiled as [42 U.S.C.S. § 1104](#).

Effective Dates.

Section 2 of S.L. 1985, ch. 156 declared an emergency. Approved March 21, 1985.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 9 was effective January 2, 1995.

CASE NOTES

[Necessity of appropriation.](#)

[Salaries.](#)

[Warrants.](#)

[Necessity of Appropriation.](#)

Allegation that money has been duly appropriated for payment of claim is essential allegation of petition for mandate to compel auditor [now state controller] to draw warrant. [Herrick v. Gallet, 35 Idaho 13, 204 P. 477 \(1922\)](#).

Salaries.

Where salary has been fixed by legislature for a constitutional office, statute directing payment of salaries, authorizing auditor [now state controller] to draw a warrant therefor, is sufficient appropriation. *Reed v. Huston*, 24 Idaho 26, 132 P. 109 (1913); *Rich v. Huston*, 24 Idaho 34, 132 P. 112 (1913).

Warrants.

The drawing of the warrant by the auditor [now state controller] withdraws not a cent from the treasury. The warrant is nothing but an evidence of debt that may or may not be honored by the treasurer; certainly not, if there is insufficient money in the contingent fund to pay it. *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931).

Cited *Kingsbury v. Anderson*, 5 Idaho 771, 51 P. 744 (1898).

OPINIONS OF ATTORNEY GENERAL

Federal Disbursements.

The constitutional restrictions of fiscal management do not appear to affect participation in the delay of drawdown procedures implemented under 5 U.S.C.S. § 301 and 31 C.F.R. Part 205. OAG 83-6.

§ 67-1004. Certified copies of documents as evidence. — The state controller must, in addition to his original handwritten signature, keep and use a facsimile signature or electronic signature for the authentication of all papers, writings, and documents required by law to be certified by him, and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original.

History.

1865, p. 190, § 17; R.S., § 220; am. R.C., § 114; reen. C.L., § 114; C.S., § 154; I.C.A., § 65-913; am. and redesign. 1994, ch. 181, § 10, p. 575; am. 2003, ch. 32, § 36, p. 115.

STATUTORY NOTES

Compiler's Notes.

Former § 67-1004 was amended and redesignated as § 67-1002 by S.L. 1994, ch. 181, § 8, effective January 2, 1995.

This section was formerly compiled as § 67-1014.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch.

181, § 10 was effective January 2, 1995.

§ 67-1005. Official bond. — The state controller must be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

History.

R.S., § 222; am. R.C., § 115; reen. C.L., § 115; C.S., § 155; I.C.A., § 65-914; am. 1971, ch. 136, § 40, p. 522; am. and redesign. 1994, ch. 181, § 11, p. 575.

STATUTORY NOTES

Compiler's Notes.

Former § 67-1005 was amended and redesignated as § 67-1022 by S.L. 1994, ch. 181, § 16, effective January 2, 1995.

This section was formerly compiled as § 67-1015.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 11 was effective January 2, 1995.

§ 67-1006. Appointment of deputy. — The state controller may appoint such deputies, assistants and employees, and fix the compensation thereof, within the limits of appropriation made therefor, as is necessary.

History.

Based upon R.S., § 218; compiled and reen. R.C., § 116; reen. C.L., § 116; C.S., § 156; I.C.A., § 65-915; am. 1976, ch. 42, § 13, p. 90; am. and redesisg. 1994, ch. 181, § 12, p. 575.

STATUTORY NOTES

Compiler's Notes.

Former § 67-1006 was amended and redesignated as § 67-1022 by S.L. 1994, ch. 181, § 16, effective January 2, 1995.

This section was formerly compiled as § 67-1016.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 12 was effective January 2, 1995.

§ 67-1007. State officers and custodians of state funds — Examination. — The state controller may examine any of the books, papers, accounts, bills, vouchers or other documents of property of any or all of the state officers, and custodians of state funds. He may examine, under oath, state officers and the custodians of state funds aforesaid.

History.

1905, p. 386, § 10; am. R.C., § 179; reen. C.L. 12:10; C.S., § 294; am. 1923, ch. 164, § 9, p. 242; I.C.A., § 65-2611; **I.C., § 67-2713; I.C., § 67-1030**, as changed and amended by 1974, ch. 24, § 7, p. 744; am. and redesign. 1994, ch. 181, § 13, p. 575.

STATUTORY NOTES

Compiler's Notes.

Former § 67-1007 was amended and redesignated as § 67-1051 by S.L. 1994, ch. 181, § 25, effective January 2, 1995.

This section was formerly compiled as § 67-1030.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch.

181, § 13 was effective January 2, 1995.

CASE NOTES

Post-Audit Functions.

Since the territorial controller was authorized to perform all the types of audits which were performed in the territory prior to statehood, the controller was charged with superintending the fiscal concerns of the territory, and the controller was expressly directed to perform certain post-audit functions, the territorial controller would have been authorized to perform a modern post-audit function under Idaho [Const., Art. IV, § 1](#), should that function have been in use at the time. Therefore, since the state auditor [now state controller] has implied constitutional powers and duties equivalent to those of the territorial controller, performing the post-audit function is a constitutional duty of the state auditor. [Williams v. State Legislature](#), 111 Idaho 156, 722 P.2d 465 (1986).

§ 67-1008. State controller to report delinquent collectors. — The state controller must report to the legislature, when requested in writing by the presiding officer of either house, a list of all the collectors of revenue, and other holders of public money, whose accounts remain unsettled for six (6) months after they ought to have been settled according to law, and the reasons therefor.

History.

1865, p. 190, § 13; R.S., § 217; am. R.C., § 112; reen. C.L., § 112; C.S., § 152; I.C.A., § 65-911; am. and redesign. 1994, ch. 181, § 14, p. 575.

STATUTORY NOTES

Compiler's Notes.

Former § 67-1008 was amended and redesignated as § 67-1023 by S.L. 1994, ch. 181, § 17, effective January 2, 1995.

This section was formerly compiled as § 67-1012.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 14 was effective January 2, 1995.

§ 67-1009. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1009 was amended and redesignated as § 67-1024 by § 18 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1010. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1010 was amended and redesignated as § 67-1041 by § 23 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1011. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1011 was amended and redesignated as § 67-1003 by § 9 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1012. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1012 was amended and redesignated as § 67-1008 by § 14 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1013. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1013 was amended and redesignated as § 67-1042 by § 24 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1014. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1014 was amended and redesignated as § 67-1004 by § 10 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1015. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1015 was amended and redesignated as § 67-1005 by § 11 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1016. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1016 was amended and redesignated as § 67-1006 by § 12 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1017. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1017 was amended and redesignated as § 67-1031 by § 22 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1018. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1018 was amended and redesignated as § 67-1021 by § 15 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1019, 67-1020. Employment of experts — Appropriation for expenses. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1941, ch. 27, §§ 2, 3, p. 51, were repealed by S.L. 1976, ch. 42, § 41.

§ 67-1021. Authority to install accounting and reporting system for state. — (1) The provisions of this section reserve to the state controller, in order to carry out the provisions and requirements of this section, the authority to establish funds in addition to those required by law or constitutional provisions.

(2) The state controller shall have power to prescribe and install, to modify from time to time, and to enforce, an accurate and modern system of accounting and financial reporting for the state of Idaho, to cover and include all its financial transactions and all funds, accounts, and property owned by or held in trust or custody of the state, and to that end may take all proceedings and make all investigations necessary to procure the information for said purposes, and may also require the keeping of such books, records and accounts and the making of such reports as he may from time to time prescribe, in and by the office of the state controller, and all other state offices, departments, boards and institutions.

(3) For the purpose of maintaining a uniform statewide accounting and reporting system, the state controller shall define and classify the various funds, accounts, grants and other financial structures. This system shall normally reflect generally accepted governmental accounting principles developed by the governmental accounting standards board or its successor.

History.

1941, ch. 27, § 1, p. 51; am. 1976, ch. 42, § 14, p. 90; am. 1991, ch. 51, § 2, p. 94; am. and redesign. 1994, ch. 181, § 15, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1018.

Former § 67-1021 was amended and redesignated as § 67-1026 by S.L. 1994, ch. 181, § 20, effective January 2, 1995.

For the governmental accounting standards board, referred to in subsection (3), see *<http://gasb.org>*.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 15 was effective January 2, 1995.

CASE NOTES

Purpose.

The principal object and purpose of this section is to authorize the state auditor [now state controller] to prescribe and enforce a modern and accurate system of accounting, bookkeeping and reporting relative to financial transactions, funds and property of the state. The provisions of this section in no way conflict with the duty prescribed in § 67-2703 (now repealed). *Smylie v. Williams*, 81 Idaho 335, 341 P.2d 451 (1959).

§ 67-1021A. Business information infrastructure project. — (1) Notwithstanding any laws to the contrary, the state controller shall engage in a project to modernize and replace the state’s aging business information infrastructure, including its financial, payroll, human capital management, budget and procurement systems. The purpose of the project shall be to modernize the state’s business information infrastructure and to consolidate duplicative business systems into a centralized enterprise resource planning system in order to achieve standardized business practices and greater transparency in the state’s data.

(2) The cost of modernizing the state’s business information infrastructure shall be equitably distributed among and between all state and public entities that use the services and functions outlined in subsection (1) of this section. On or before June 30 of each year from the effective date of this act until and including June 30, 2022, all moneys deposited to the indirect cost recovery fund resulting from the assessment of the amounts allocated in the annual statewide indirect cost allocation plan pursuant to [section 67-3531, Idaho Code](#), shall be transferred to the business information infrastructure fund established in [section 67-1021C, Idaho Code](#). Transfers under this section shall occur as requested by the state controller and no later than June 30 of each year.

History.

[I.C., § 67-1021A](#), as added by 2018, ch. 45, § 1, p. 110.

STATUTORY NOTES

Compiler’s Notes.

The phrase “the effective date of this act” in the second sentence in subsection (2) refers to the effective date of S.L. 2018, Chapter 45, which was effective March 7, 2018.

Effective Dates.

Section 4 of S.L. 2018, ch. 45 declared an emergency. Approved March 7, 2018.

§ 67-1021B. Business information infrastructure governance. — (1)

A leadership council for the business information infrastructure program consisting of the governor, the state controller, the speaker of the house of representatives or his designee and the president pro tempore of the senate or his designee is hereby created. It shall be the duty of the leadership council to garner statewide cooperation in standardizing business practices and gaining efficiencies wherever possible in order to eliminate duplicative business systems. The leadership council shall serve as the final authority in resolving any issues that may significantly alter the intended outcomes or completion timeline of the business information infrastructure project. The state controller alone shall be responsible for presenting any such issues to the leadership council.

(2) The state controller shall have the authority to create working committees and advisory boards as needed to achieve the goals of the business information infrastructure project.

History.

I.C., § 67-1021B, as added by 2018, ch. 45, § 2, p. 110.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 2018, ch. 45 declared an emergency. Approved March 7, 2018.

§ 67-1021C. Business information infrastructure fund. — There is hereby created in the state treasury a fund to be known as the business information infrastructure fund, which shall consist of all moneys credited or transferred in accordance with section 67-1021A, Idaho Code, and any other funds appropriated or transferred in accordance with law. The fund is hereby continuously appropriated to the state controller for the purposes of procurement and implementation of a statewide enterprise resource planning system including, but not necessarily limited to, financial, payroll, budget, human capital management and procurement systems. All interest earned on the investment of idle moneys in the fund shall be returned to the fund. All moneys in the fund shall be used for the procurement and implementation of the system as set forth in this section. Any unexpended moneys remaining after June 30, 2023, shall revert to the general fund.

History.

I.C., § 67-1021C, as added by 2018, ch. 45, § 3, p. 110.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Effective Dates.

Section 4 of S.L. 2018, ch. 45 declared an emergency. Approved March 7, 2018.

§ 67-1022. Warrants, how drawn — Lost warrants. — (1) All warrants must be drawn in the order prescribed by the state controller.

(2) In case of the loss or destruction of any warrant heretofore issued or that may be issued by the state controller, and, after notice by the involved agency to the state controller to stop payment on the lost or destroyed warrant the state controller is hereby authorized to issue his replacement warrant to take the place of the warrant so lost or destroyed, upon satisfactory certification of the loss of the said warrant. In the issuance of any such replacement warrant, the state controller may require an indemnity bond, conditioned upon the payment to the state of Idaho of any loss or damage or obligation by reason of the said lost warrant becoming a claim against the state; and, it shall be the duty of the state controller to notify the state treasurer of the issuance of the said replacement warrant.

History.

R.S., § 208; 1907, p. 348, § 1; compiled and reen. R.C., § 105; am. R.C., § 106; reen. C.L., §§ 105, 106; C.S., §§ 145, 146; I.C.A., § 65-905, 65-906; am. 1976, ch. 42, §§ 9, 10, p. 90; am and redesign. 1994, ch. 181, § 16, p. 575; am. 1996, ch. 170, § 1, p. 554; am. 2017, ch. 282, § 1, p. 743.

STATUTORY NOTES

Cross References.

Claims against state passed upon by board of examiners, Idaho [Const., Art. IV, § 18](#).

State treasurer, § 67-1201 et seq.

Amendments.

The 2017 amendment, by ch. 282, in subsection (2), in the first sentence, deleted “state treasurer and” preceding “state controller to stop” near the beginning, substituted “replacement warrant” for “duplicate warrant” near the middle, and substituted “certification” for “proof by affidavit” near the end and, in the last sentence, substituted “replacement warrant” for “duplicate warrant” near the beginning and at the end, and deleted former

subsection (3), which read: “In all situations when the involved agency is required to send an affidavit to the state controller as proof of the loss of a warrant, the agency shall also send a duplicate or photocopy of the affidavit to the state treasurer”.

Compiler’s Notes.

Former § 67-1022 was amended and redesignated as § 67-1027 by S.L. 1994, ch. 181, § 21, effective January 2, 1995.

This section was formerly compiled as §§ 67-1005 and 67-1006.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 16 was effective January 2, 1995.

§ 67-1023. Claims against the state. — All persons having claims against the state must exhibit the same, with the evidence in support thereof, to the state controller, to be examined, settled and allowed by the board of examiners, within two (2) years after such claims shall accrue, and not afterward. In all suits brought in behalf of the state, no debt or claim must be allowed against the state as a set-off but such as have been exhibited to the state controller, and allowed or disallowed by the board of examiners except only in cases where it is proved to the satisfaction of the court that the defendant, at the time of the trial, is in possession of vouchers which he could not produce to the state controller, or that he was prevented from exhibiting the claim to the state controller by absence from the state, sickness, or unavoidable accident. No claim which is not provided for by law shall be examined or set off.

History.

1865, p. 190, § 7; R.S., § 211; compiled and reen. R.C., § 109; reen. C.L., § 109; C.S., § 149; I.C.A., § 65-908; am. and redesign. 1994, ch. 181, § 17, p. 575.

STATUTORY NOTES

Cross References.

Board of examiners, Idaho [Const., Art. IV, § 18](#) and [§ 67-2001 et seq.](#)

Compiler's Notes.

Former § 67-1023 was amended and redesignated as § 67-1081 by S.L. 1994, ch. 181, § 31, effective January 2, 1995.

This section was formerly compiled as § 67-1008.

Section 12 of S.L. 1939, ch. 113, which proposed to transfer the powers and duties of the auditor as secretary of the state board of examiners as set out in this section and § 67-1001 to the comptroller of the state of Idaho, was declared unconstitutional by [Wright v. Callahan \(1940\)](#), [61 Idaho 167](#), [99 P.2d 961](#).

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 186, § 17 was effective January 2, 1995.

CASE NOTES

Claims without appropriated funds.

Constitutionality.

Fixed claims.

Jurisdiction of Supreme Court.

Limitation.

Claims Without Appropriated Funds.

If the legislature has not previously appropriated moneys for payment of the item for which a claim has been submitted, then the board of examiners may recommend or refuse to recommend that it be submitted to the succeeding session of the legislature for payment. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Constitutionality.

The legislature, in the exercise of its authority to prescribe “such other duties” under Idaho *Const.*, Art IV, § 18, has seen fit to prescribe the duty of

examination of claims by the board of examiners and its authority so exercised is within the scope of and in harmony with the quoted provision of the **Constitution. Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).**

Fixed Claims.

If the amount of a claim has been fixed or settled by lawful contract or by authority of the department head of a state agency or other person authorized by law to fix the same, then the board of examiners exercises only a ministerial function in examining and approving the claim for paying after having determined that the claim is proper as to form, certification and chargeability against the appropriation. **Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).**

Jurisdiction of Supreme Court.

The supreme court's jurisdiction to hear claims against the state not being related to claims for payment of which no appropriation has been made but embracing all claims not included within the classes excepted, it had authority to compel the board of examiners to examine and approve for payment claims of children's commission upon determining that they were proper as to form, certification and chargeability against the appropriation. **Jewett v. Williams, 84 Idaho 93, 369 P.2d 590 (1962).**

Limitation.

After expiration of period limited by this section, board of examiners is without jurisdiction to consider claim. **Davis v. State, 30 Idaho 137, 163 P. 373 (1917).**

Cited Padgett v. Williams, 82 Idaho 28, 348 P.2d 944 (1960).

§ 67-1024. Regulating claims requiring payment in advance. — When an expenditure authorized to be made by any state department, body or officer is of such a nature as to require payment in advance of performance or delivery, then the right of the officer to obtain such service or property on behalf of or in the service of the state shall constitute a claim against the state to be presented and allowed as are other claims. The board of examiners may, in its discretion, prescribe policies and procedures with respect to the filing and allowance of such claims and the subsequent accounting therefor. Any money obtained upon such claim and not expended on behalf of or in the service of the state shall be repaid by the claimant to the state.

History.

1939, ch. 197, § 1, p. 374; am. and redesign. 1994, ch. 181, § 18, p. 575; am. 2003, ch. 32, § 37, p. 115.

STATUTORY NOTES

Cross References.

Board of examiners, § 67-2001 et seq.

Compiler's Notes.

Former § 67-1024 was amended and redesignated as § 67-1082 by S.L. 1994, ch. 181, § 32, effective January 2, 1995.

This section was formerly compiled as § 67-1009.

Effective Dates.

Section 2 of S.L. 1939, ch. 197 declared an emergency. Approved March 9, 1939.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has

been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 18 was effective January 2, 1995.

§ 67-1025. Account of endowment funds, how kept. — The state controller must keep a separate account of each of the endowment funds, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for each purpose.

History.

R.S., § 207; am. R.C., § 104; reen. C.L., § 104; C.S., § 143; I.C.A., § 65-903; am. and redesisg. 1994, ch. 181, § 19, p. 575.

STATUTORY NOTES

Compiler's Notes.

Former § 67-1025 was amended and redesignated as § 67-1083 by S.L. 1994, ch. 181, § 33, effective January 2, 1995.

This section was formerly compiled as § 67-1003.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 19 was effective January 2, 1995.

§ 67-1026. Offsetting obligations and making necessary entries. —

The state controller shall have power, with the consent of the state board of examiners, whenever he shall determine that any creditor of the state of Idaho or any of its departments, agencies or institutions is indebted to the state of Idaho or any of its departments, agencies or institutions to offset such obligations, and make all necessary transfers and entries in the books of the state in accordance with sound accounting practice to accomplish such offset.

History.

1943, ch. 48, § 1, p. 94; am. and redesign. 1994, ch. 181, § 20, p. 575.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Prior Laws.

Former § 67-1026, which comprised 1905, p. 386, § 6; reen. R.C., § 175; reen. C.L. 12:6; C.S., § 290; am. 1923, ch. 164, § 5, p. 242; I.C.A., § 65-2607; **I.C., § 62-2709**; **I.C., § 67-1026**, amended by 1974, ch. 24, § 3, p. 744, was repealed by S.L. 1994, ch. 181, § 6, effective January 2, 1995, since the amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller was adopted at the general election held November 8, 1994.

Compiler's Notes.

This section was formerly compiled as § 67-1021.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has

been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 20 was effective January 2, 1995.

§ 67-1027. Authority to recognize assignments of obligations owing by state. — The authority of the state controller to recognize assignments of obligations owing by the state of Idaho is limited to those assignments as may be specially approved by the state board of examiners.

History.

1943, ch. 48, § 2, p. 94; am. and redesign. 1994, ch. 181, § 21, p. 575.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Compiler's Notes.

Former § 67-1027 was amended and redesignated as § 67-1081 by S.L. 1994, ch. 181, § 31, effective January 2, 1995.

This section was formerly compiled as § 67-1022.

Effective Dates.

Section 3 of S.L. 1943, ch. 48 declared an emergency. Approved February 15, 1943.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 21 was effective January 2, 1995.

§ 67-1028. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1028 was amended and redesignated as § 67-1056 by § 30 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1029. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1029 was amended and redesignated as § 67-1084 by § 34 of S.L. 1994, ch. 181, effective January 2, 1995.

This section was formerly compiled as § 67-2712.

§ 67-1030. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1030 was amended and redesignated as § 67-1007 by § 13 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1031. Funds created by regents of University of Idaho and state board of education — State controller to keep records. — The state controller is hereby empowered and directed to keep such records as may be necessary and expedient of any and all general or special funds that the regents of the University of Idaho and the state board of education may create for the state's universities and colleges and to file and keep as part of the records of his office any orders, vouchers, books, or other documents which may be delivered to him by the regents or the state board of education or their agent.

History.

1927, ch. 80, § 1, p. 98; I.C.A., § 65-916; am. and redesign. 1994, ch. 181, § 22, p. 575.

STATUTORY NOTES

Cross References.

Regents of University of Idaho, § 33-2802.

State board of education, § 33-101 et seq.

Compiler's Notes.

Former § 67-1031 was amended and redesignated as § 67-1052 by S.L. 1994, ch. 181, § 26, effective January 2, 1995.

This section was formerly compiled as § 67-1017.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 22 was effective January 2, 1995.

§ 67-1032. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1032 was amended and redesignated as § 67-1053 by § 27 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1033. Annual report to governor — Contents. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1905, p. 386, § 15; reen. R.C., § 184; reen. C.L. 12:15; C.S., § 299; am. 1923, ch. 164, § 13, p. 242; I.C.A., § 65-2616; **I.C., § 67-2718**; **I.C., § 67-1033**, as changed by 1974, ch. 24, § 11, p. 744; am. 1976, ch. 42, § 15, p. 90, was repealed by S.L. 1994, ch. 181, § 6, effective January 2, 1995.

§ 67-1034. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1034 was amended and redesignated as § 67-1054 by § 28 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1035. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-1035 was amended and redesignated as § 67-1055 by § 29 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1036. Administration of accounting system. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 67-1036**, as added by 1976, ch. 42, § 16, p. 90, was repealed by S.L. 1994, ch. 181, § 6, effective January 2, 1995.

§ 67-1037 — 67-1040. [Reserved.]

§ 67-1041. Vouchers and accounts preserved. — Evidence of all accounts, vouchers, and/or documents settled, or to be settled, by the state controller or board of examiners must be preserved for not less than two (2) years. After the legislative council has indicated no further need, such records may be disposed of unless a specific written request for further retention has been made to the state controller.

History.

1865, p. 190, § 9; R.S., § 213; compiled and reen. R.C., § 110; reen. C.L., § 110; C.S., § 150; I.C.A., § 65-909; am. 1976, ch. 42, § 11, p. 90; am. 1980, ch. 345, § 1, p. 880; am. 1993, ch. 327, § 29, p. 1186; am. and redesisg. 1994, ch. 181, § 23, p. 575; am. 2003, ch. 32, § 38, p. 115.

STATUTORY NOTES

Cross References.

Claims against state passed upon by board of examiners, Idaho **Const., Art. IV, § 18**.

Legislative council, § 67-427.

State board of examiners, § 67-2001 et seq.

Compiler's Notes.

This section was formerly compiled as § 67-1010.

An attempted amendment of this section by S.L. 1939, ch. 113, § 13 was declared unconstitutional in *Wright v. Callahan*, **61 Idaho 167, 99 P.2d 961 (1940)**.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 23 was effective January 2, 1995.

§ 67-1042. Inspection of controller's books by legislature. — All the books, papers, letters, and transactions pertaining to the office of the state controller are open to the inspection of a committee of the legislature, or either branch thereof, who shall examine all the state controller's accounts.

History.

1865, p. 190, § 15; R.S., § 219; am. R.C., § 113; reen. C.L., § 113; C.S., § 153; I.C.A., § 65-912; am. and redesign. 1994, ch. 181, § 24, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1013.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 24 was effective January 2, 1995.

§ 67-1043 — 67-1050. [Reserved.]

§ 67-1051. Proceedings against defaulters. — Whenever any person has received moneys, or has money or other personal property which belongs to the state, or has been intrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to, or held in trust by, the state, and fails to render an account thereof to, and make settlement with, the state controller within the time prescribed by law, or, when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the state controller, within twenty (20) days after such requisition, the state controller must state an account with such person, charging twenty-five per cent (25%) damages, and interest at the rate of ten per cent (10%) per annum from the time of failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated. But in case the state controller cannot, for want of information, state an account, he may, in any action brought by him, aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the state.

History.

R.S., § 209; am. R.C., § 107; reen. C.L., § 107; C.S., § 147; I.C.A., § 65-907; am. and redesisg. 1994, ch. 181, § 25, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1007.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 25 was effective January 2, 1995.

CASE NOTES

When Damages Imposed.

Damages imposed by this section are intended as a penalty for wilful dereliction or refusal of officer to account for moneys which he receives and will not be imposed where there is no design of the officer to avoid his duty or misinterpret the laws to his own advantage, and where he has acted on advice of attorney general. *State ex rel. Anderson v. Lewis*, 6 Idaho 51, 52 P. 163 (1898).

§ 67-1052. Refusal to make returns and exhibits — Penalty. — Each and every person required herein to make returns and exhibits to the state controller, who shall refuse or neglect to make such returns or exhibits, or who shall refuse to give such information required by the state controller, shall be guilty of a felony, and shall be punished by a fine not exceeding five thousand dollars (\$5,000), or imprisonment in the penitentiary not more than five (5) years or both.

History.

1905, p. 386, § 11; reen. R.C., § 180; reen. C.L. 12:11; C.S., § 295; am. 1923, ch. 164, § 10, p. 242; I.C.A., § 65-2612; **I.C., § 67-2714; I.C., § 67-1031**, as changed and amended by 1974, ch. 24, § 8, p. 744; am. and redesign. 1994, ch. 181, § 26, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1031. Prior to its redesignation by S.L. 1974, ch. 24, § 8, § 67-1031 was compiled as § 67-2714.

The term “herein” near the beginning of the section refers to the 1905 act which begins on page 386 and is currently codified as §§ 67-1001, 67-1007, 67-1052 to 67-1056, 67-1081, 67-1084, 67-2717 and 67-2720.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 26 was effective January 2, 1995.

§ 67-1053. Obstructing or misleading state controller — Penalty. —

Any person who shall wilfully obstruct or mislead the state controller in the execution of his duties as by this chapter prescribed, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine of not more than five thousand dollars (\$5,000), or imprisonment in the penitentiary not more than five (5) years, or both.

History.

1905, p. 386, § 13; reen. R.C., § 182; reen. C.L. 12:13; C.S., § 297; am. 1923, ch. 164, § 11, p. 242; I.C.A., § 65-2614; **I.C., § 67-2716; I.C., § 67-1032**, as changed and amended by 1974, ch. 24, § 9, p. 744; am. and redesisg. 1994, ch. 181, § 27, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1032. Prior to its amendment and redesignation by S.L. 1974, ch. 24, § 9, former § 67-1032 was compiled as § 67-2716.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment to this section by S.L. 1994, ch. 181, § 27 was effective January 2, 1995.

§ 67-1054. State treasurer a defaulter — Report to governor — Removal from office. — If, at any time, upon an examination being made by the state controller of the books and accounts of the state treasurer, and the funds under his control, it shall be found that the state treasurer is a defaulter, it shall be the duty of the state controller to at once report such fact to the governor who shall have authority upon receiving such report to at once suspend the treasurer, and to appoint a treasurer temporarily, and to continue such suspension until such defalcation shall have been made good: provided, however, that in case it shall appear to the satisfaction of the governor that such defalcation cannot be made good by the state treasurer, he shall have authority to declare said office vacant, and fill the same by appointment as in case of other vacancies.

History.

1905, p. 386, § 18; reen. R.C., § 187; am. C.L. 12:18; C.S., § 302; am. 1923, ch. 164, § 15, p. 242; I.C.A., § 65-2619; **I.C., § 67-2721; I.C., § 67-1034**, as changed by S.L. 1974, ch. 24, § 13, p. 744; am. and redesign. 1994, ch. 181, § 28, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1034. Prior to its amendment and redesignation by S.L. 1974, ch. 24, § 13, former § 67-1034 was compiled as § 67-2721.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment to this section by S.L. 1994, ch. 181, § 28 was effective January 2, 1995.

§ 67-1055. County treasurer a defaulter — Report to county commissioners — Removal from office. — If, at any time, the state controller, upon an examination of the books and accounts of any treasurer of any county, and the funds under the control, or in the custody of, such treasurer, as authorized by law, shall find that any such treasurer is a defaulter, he shall at once report such defalcation or inability of such treasurer to the board of county commissioners of the county interested, which board of county commissioners shall, upon receiving such notice, have authority to suspend such treasurer, and to appoint a treasurer temporarily, and to continue such suspension until such defalcation shall have been made good: provided, however, that such board of county commissioners shall have power, in case it shall appear to their satisfaction that such defalcation cannot be made good, to declare said office vacant, and to fill the same by appointment as required by law in case of vacancies arising in any such office.

History.

1905, p. 386, § 19; reen. R.C., § 188; reen. C.L. 12:19; C.S., § 303; I.C.A., § 65-2620; **I.C., § 67-2722; I.C., § 67-1035**, as changed and amended by 1974, ch. 24, § 14, p. 744; am. and redesign. 1994, ch. 181, § 29, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1035. Prior to its amendment and redesignation by S.L. 1974, ch. 24, § 14, former § 67-1035 was compiled as § 67-2722.

Effective Dates.

Section 91 of S.L. 1974, ch. 24 declared this act to be in full force and effect on and after July 1, 1974.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment to this section by S.L. 1994, ch. 181, § 29 was effective January 2, 1995.

§ 67-1056. Report of examination to governor — Action against delinquent official. — The state controller shall report to the governor the result of his examination, as well as any failure of duty of any public official, as often as he thinks it may be required by public interest. The governor may cause the result of any examination, made by the state controller, to be made public, or, at his discretion, may take such action for the public security as the exigency may demand. He may, if he deems the public interest to require it, suspend any officer from further performance of duty, until the examination be had, or such security be obtained as may be demanded for the prompt protection of public funds.

History.

1905, p. 386, § 8; reen. R.C., § 177; reen. C.L. 12:8; C.S., § 292; am. 1923, ch. 164, § 7, p. 242; I.C.A., § 65-2609; **I.C., § 67-2711; I.C., § 67-1028**, as changed and amended by 1974, ch. 24, § 5, p. 744; am. and redesisg. 1994, ch. 181, § 30, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1028. Prior to its amendment and redesignation by S.L. 1974, ch. 24, § 5, former § 67-1028 was compiled as § 67-2711.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate

at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment to this section by S.L. 1994, ch. 181, § 30 was effective January 2, 1995.

CASE NOTES

County Commissioners.

This section does not affect the power of county commissioners to audit accounts of county officers. *Prothero v. Board of Comm’rs*, 22 Idaho 598, 127 P. 175 (1912).

§ 67-1057 — 67-1080. [Reserved.]

§ 67-1081. Submission of annual financial statement to state controller by all taxing units of government — Policies. — (1) When requested in addition to any other statement of financial condition required by law, the auditor of every county, and the treasurer of any other taxing unit of government, shall submit to the state controller an annual financial report, under oath, as in this act provided. The state controller shall formulate policies necessary hereunder.

(2) The state controller shall report to the prosecuting attorney, the refusal or neglect of county officers to obey his instructions. The prosecuting attorney, in case of county or municipal officers, shall promptly take action to enforce a compliance with such instructions of the state controller.

History.

1905, p. 386, § 7; reen. R.C., § 176; reen. C.L. 12:7; C.S., § 291; am. 1923, ch. 164, § 6, p. 242; I.C.A., § 65-2608; 1969, ch. 402, § 1, p. 1121; **I.C., § 67-2710; I.C., § 67-1027**, as changed and amended by 1974, ch. 24, § 4, p. 744; am. and redesisg. 1994, ch. 181, § 31, p. 575; am. 2003, ch. 32, § 39, p. 115.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

This section was formerly compiled as §§ 67-1023 and 67-1027. Prior to its amendment and redesignation by S.L. 1974, ch. 24, § 4, former § 67-1027 was compiled as § 67-2710.

The terms “this act” and “hereunder” in subsection (1) refer to S.L. 1969, Chapter 402, which is presently codified as §§ 67-1081 to 67-1083.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 31 was effective January 2, 1995.

CASE NOTES

County Commissioners.

This section does not affect the power of county commissioners to audit accounts of county officers. *Prothero v. Board of Comm’rs*, 22 Idaho 598, 127 P. 175 (1912).

§ 67-1082. Financial statement — Form. — The financial report required in section 67-1081, Idaho Code, shall be in a standard form prescribed by the state controller.

History.

1969, ch. 402, § 2, p. 1121; am. and redesign. 1994, ch. 181, § 32, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-1024.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 32 was effective January 2, 1995.

§ 67-1083. Failure to submit financial statement — Penalty. — The person responsible shall submit the financial report required in section 67-1081, Idaho Code, within one hundred eighty (180) days after the last day of the reporting unit's fiscal year. Failure to comply with the terms of this act is a misdemeanor.

History.

1969, ch. 402, § 3, p. 1121; am. and redesign. 1994, ch. 181, § 33, p. 575.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes.

This section was formerly compiled as § 67-1025.

The term "this act" refers to S.L. 1969, Chapter 402, which is presently codified as §§ 67-1081 to 67-1083.

Effective Dates.

Section 4 of S.L. 1969, ch. 402 provided that this act should become effective on and after January 1, 1970. However, § 1 of S.L. 1970, ch. 254, which became effective March 14, 1970 provided that this act as it relates to standardized financial reports of taxing units was suspended until January 1, 1972.

Section 44 of S.L. 1994, ch. 181 provided: "(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

"(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 33 was effective January 2, 1995.

§ 67-1084. Duties of officers to assist state controller. — To enable the state controller to properly perform the services herein required of him, the county commissioners and officers of the several counties, the state treasurer and all other county and state officers, shall afford all reasonable and needed facilities to the state controller. All officers and employees of the counties, herein referred to shall make returns and exhibits to the state controller, under oath, in such form, and at such time or times, as he shall prescribe.

History.

1905, p. 386, § 9; am. R.C., § 178; am. C.L. 12:9; C.S., § 293; am. 1923, ch. 164, § 8, p. 242; I.C.A., § 65-2610; **I.C., § 67-2712**; **I.C., § 67-1029**, as changed and amended by 1974, ch. 24, § 6, p. 744; am. and redesign. 1994, ch. 181, § 34, p. 575.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as §§ 67-1029. Prior to its amendment and redesignation by S.L. 1974, ch. 24, § 6, former § 67-1029 was compiled as § 67-2712.

The term “herein” in the first and second sentences refers to S.L. 1905, p. 386, which is presently codified as §§ 67-1001, 67-1007, 67-1052 to 67-1056, 67-1081, 67-1084, 67-2717, and 67-6720.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 34 was effective January 2, 1995.

Chapter 11

CLASSIFICATION AND REPORTING OF RECEIPTS AND WARRANT DISBURSEMENTS

Sec.

67-1101. Uniform classification of receipts and expenditures — Duty of state controller.

67-1102. Receipts and disbursements — Classification — Tabulation by calendar months.

67-1103. Certificates and claim vouchers to contain data essential to classification.

67-1104. Annual reports.

67-1105, 67-1106. [Repealed.]

§ 67-1101. Uniform classification of receipts and expenditures — Duty of state controller. — It shall be the duty of the state controller to adopt and promulgate a uniform classification of revenues and nonrevenue receipts by function and source, and a uniform classification of expenditures by function and object, which classifications shall be conformable to modern standards of accounting and reporting and shall be adapted to the requirements of the division of financial management for budget purposes.

History.

1921, ch. 103, § 1, p. 231; I.C.A., § 65-1001; am. 1994, ch. 181, § 35, p. 575.

STATUTORY NOTES

Cross References.

Budget, § 67-3501 et seq.

Division of financial management, § 67-1910.

State controller, § 67-1001 et seq.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch.

181, § 35 was effective January 2, 1995.

§ 67-1102. Receipts and disbursements — Classification — Tabulation by calendar months. — It shall be the duty of the state controller to classify, according to the aforesaid standards, all remittances received into the state treasury and all disbursements authorized therefrom, and to tabulate the same by calendar months from data on file in his office.

History.

1921, ch. 103, § 2, p. 231; I.C.A., § 65-1002; am. 1994, ch. 181, § 36, p. 575; am. 2003, ch. 32, § 40, p. 115.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 36 was effective January 2, 1995.

§ 67-1103. Certificates and claim vouchers to contain data essential to classification. — The state controller shall not record the receipt, nor file any claim voucher for disbursement, until all data essential for classification purposes regarding such document is set forth in accordance with the policies and procedures of the state controller.

History.

1921, ch. 103, § 3, p. 231; I.C.A., § 65-1003; am. 1994, ch. 181, § 37, p. 575; am. 2003, ch. 32, § 41, p. 115.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 37 was effective January 2, 1995.

§ 67-1104. Annual reports. — The state controller shall prepare, annually on a fiscal year basis, exhibits showing the proper detailed classification of all receipts and warrant disbursements, respectively, of each office, department, bureau and institution of the state of Idaho, followed by a recapitulation of receipts from general sources and a recapitulation of disbursements.

One (1) of such exhibits shall be delivered to the division of financial management and one (1) to the legislative services office, two (2) to the office, department or governing board referred to in the exhibit (one (1) of which shall be for the use of the executive head of the particular bureau, institution or other unit covered by such exhibit), and the fourth shall be permanently filed in the state controller's office.

History.

1921, ch. 103, § 4, p. 231; I.C.A., § 65-1004; am. 1941, ch. 5, § 1, p. 8; am. 1976, ch. 42, § 17, p. 90; am. 1984, ch. 134, § 1, p. 320; am. 1993, ch. 327, § 30, p. 1186; am. 1994, ch. 181, § 38, p. 575; am. 1996, ch. 159, § 20, p. 502.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Legislative services office, § 67-701 et seq.

State controller, § 67-1001 et seq.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1941, ch. 5 declared an emergency. Approved January 17, 1941.

Section 42 of S.L. 1976, ch. 42, reads: “An emergency existing therefore, which emergency is hereby declared to exist, sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval; sections 16, 34, 35, 36 and 37 of this act shall be in full force and effect on and after July 1, 1977. All other sections shall be in full force and effect on and after July 1, 1976.”

Section 44 of S.L. 1994, ch. 181 provided: “(1) Section 42 of this act shall be in full force and effect on and after July 1, 1994.

“(2) All other sections of this act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.

“If an amendment to the Constitution of the State of Idaho to change the name of the state auditor to state controller is not adopted by the electorate at the general election of 1994, none of the sections of this act shall be in effect except Section 42 of this act.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 38 was effective January 2, 1995.

**§ 67-1105, 67-1106. Report of receipts, disbursements —
Construction of months January, December. [Repealed.]**

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1921, ch. 103, §§ 5, 6, p. 231; I.C.A., §§ 65-1005, 65-1006, were repealed by S.L. 1976, ch. 42, § 41.

Chapter 12

STATE TREASURER

Sec.

67-1201. Duties of treasurer.

67-1202. Funds of state board of land commissioners.

67-1203. Establishment of a state treasurer investment advisory board —
Members — Qualifications.

67-1203A. Board — Appointment of members — Term — Removal —
Vacancies — Organization — Quorum — Meetings — Compensation.

67-1203B. Recommendation of the types and kinds of investments.

67-1204. Money to be kept in office — Penalty.

67-1205. General fund defined — Payment of interest.

67-1206. Transfers of balances in funds.

67-1207. Temporary diversion of revenues to cease on accomplishment of
purpose.

67-1208. Apportionment of forest reserve funds. [Repealed.]

67-1209. Suspense account.

67-1210. Investment of idle moneys.

67-1210A. Additional allowable investments by the state treasurer.

67-1210B. Ability to continue to invest.

67-1211. Payment of warrants.

67-1212. Unpaid warrants — Interest — Record.

67-1213. Refusal to pay warrants — Penalty — Cancellation.

67-1214. Delivery of bonds sold outside state.

67-1215. Notice of call of warrants.

67-1216. Inspection of treasurer's office.

- 67-1217. Treasurer's office — Inspection by governor.
- 67-1218. Seal of office — Certified copies of documents as evidence.
- 67-1219. Deputy state treasurer and additional deputies and employees — Appointment and bond.
- 67-1220. Official bond.
- 67-1221. Fiscal agency in New York City.
- 67-1222. Reports to be filed — Bond issues. [Repealed.]
- 67-1223. Idaho commemorative silver medallions issued by the state treasurer.
- 67-1224. Idaho credit rating enhancement committee — Membership — Compensation — Quorum — Meetings — Personnel.
- 67-1225. Powers and duties of credit rating enhancement committee.
- 67-1226. Local government investment pool.
- 67-1227. Investment at request of state agency.
- 67-1228. Treasurer's administrative fund.
- 67-1229. Interaccount transactions.

§ 67-1201. Duties of treasurer. — It is the duty of the treasurer:

1. To receive and keep all moneys belonging to the state not required to be received and kept by some other person. The treasurer may: a. Name additional or multiple custodians for such moneys.

b. Administer programs associated with receipt and keeping such moneys and enter into contracts related to such programs.

2. To file and keep, for not less than two (2) years, the records of the state controller delivered to him when moneys are paid into the treasury. After two (2) years, such records may be disposed of as provided in [section 9-328, Idaho Code](#), unless a specific written request for further retention has been made to the treasurer.

3. To report to each person paying money into the treasury a receipt showing the amount and the date of deposit. Receipts must be numbered uniquely within each fiscal year.

4. To pay amounts drawn by the state controller by generally available commercial payment methods, including but not limited to warrants, electronic payment and wire transfer, out of the accounting entity upon which they are drawn. The treasurer may enter into contracts related to administration and execution of these payment methods. The treasurer may administer programs associated with commercial payment methods and enter into contracts related to such programs.

5. To invest idle moneys in the state treasury in permitted investments, and to pay the interest received on all such investments, unless otherwise specifically required by law, into the general account [general fund] in the state operating fund.

6. To keep, for as long as the treasurer deems necessary, a record of all moneys received and disbursed.

7. To keep, for as long as the treasurer deems necessary, separate records of the different funds.

8. To report to the state controller daily, the amount disbursed for payment by warrants or other commercial payment method; which report

must show the date and number of such payments, the fund out of which they were paid, and to report to the state controller monthly, the balance of cash on hand in the treasury to the credit of each fund.

9. At the request of either house of the legislature, or any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

10. To report to the governor, upon request, the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the preceding fiscal year.

11. To authenticate with his official seal, as the treasurer deems appropriate, all writings and papers issued from his office.

12. To discharge such other duties as may be imposed upon him by law.

History.

1864, p. 415, § 2; R.S., § 230; am. R.C., § 117; reen. C.L., § 117; C.S., § 157; I.C.A., § 65-1101; am. 1976, ch. 42, § 18, p. 90; am. 1980, ch. 84, § 2, p. 183; am. 1980, ch. 173, § 1, p. 367; am. 1994, ch. 180, § 175, p. 420; am. 2016, ch. 167, § 1, p. 462; am. 2017, ch. 140, § 1, p. 333; am. 2017, ch. 236, § 1, p. 582.

STATUTORY NOTES

Cross References.

Anticipation of revenues in permanent building fund, § 57-1112.

Crime, moneys received as a result of commission, duties regarding, § 19-5301.

Custody of moneys appropriated by federal and state governments for vocational educational aid, § 33-2207.

Election, § 34-611.

Fish and game nonexpendable trust account, § 36-109.

Forest protection fund, § 38-129.

Forest reserve funds, apportionment to counties where reserve located, § 57-1301.

Gasoline, lubricating oil and fuel oil, disposition of fines under law governing, § 37-2513.

Health facilities construction account, § 39-1415.

Penalties under state depository law, §§ 67-2747 to 67-2749.

Procedure upon default of treasurer, § 67-1054.

Public utilities commission fund, payments from made by, § 61-1008.

State board of canvassers, member of, § 34-1211.

State community college account, §§ 33-2139 to 33-2143.

State controller, § 67-1001 et seq.

Tax anticipation notes, issuance by authorized, § 63-3201.

University of Idaho, state treasurer as treasurer of board of regents, § 33-2809.

Vocational rehabilitation, state treasurer as custodian of federal-aid funds, § 33-2302.

Worker's compensation, industrial administration fund, duties, §§ 72-521, 72-522.

Worker's compensation, industrial special indemnity fund, duties, §§ 72-325, 72-326, 72-329.

Amendments.

The 2016 amendment, by ch. 167, deleted "other than moneys in public endowment funds" following "state treasury" in subsection 5.

This section was amended by two 2017 acts which appear to be compatible and have been compiled together.

The 2017 amendment, by ch. 140, substituted "records" for "certificates" in the first sentence and deleted "through 9-330" following "9-328" in the second sentence of subsection 2.; rewrote subsection 3., which formerly read: "To deliver to each person paying money into the treasury a receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which receipts must be numbered in order, beginning with number one (1) at the commencement of each fiscal year";

in subsection 8., substituted “payment by warrants or other commercial payment method” for “redemption of bonds and in payment of warrants” and “payments” for “bonds and warrants”; substituted “upon request” for “at the time prescribed in this code” in subsection 10.; and inserted “as the treasurer deems appropriate” in subsection 11.

The 2017 amendment, by ch. 236, rewrote subsection 1., which formerly read: “To receive and keep all moneys belonging to the state not required to be received and kept by some other person, and if deemed necessary by the treasurer, to name additional or multiple custodians for the same”; substituted “[section 9-328, Idaho Code](#)” for “[sections 9-328 through 9-330, Idaho Code](#)” near the end of subsection 2.; and rewrote subsection 4., which formerly read: “To pay warrants drawn by the state controller out of the accounting entity upon which they are drawn”.

Compiler’s Notes.

The bracketed insertion in subsection 5 was added by the compiler to correct the name of the referenced fund.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 175 was effective January 2, 1995.

Section 6 of S.L. 2016, ch. 167 declared an emergency. Approved March 23, 2016.

CASE NOTES

[Construction.](#)

[Duties under irrigation district law.](#)

[Payment of warrants.](#)

Construction.

Under a statute creating the fruit and vegetable advertising commission and levying tax on fruits and vegetables produced within the state, the provision that the state “treasurer” should issue warrants for salaries and expenses was a mere clerical error and could be interpreted as “auditor,” the word intended by the legislature, since for the treasurer to both draw and pay warrants would contravene the state’s established system of checks and balances. *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

Duties Under Irrigation District Law.

Duties enjoined upon state treasurer, providing that he shall receive and disburse funds of irrigation district in payment of bonds of district and district’s obligations under federal contracts, are official acts as contemplated by statutes relative to official bonds which, in absence of legislative act requiring a special bond, are guaranteed by treasurer’s official bond. *Hurlebaus v. American Falls Reservoir Dist.*, 49 Idaho 158, 286 P. 598 (1930).

Payment of Warrants.

State treasurer must refuse payment of state warrant drawn by state auditor [now state controller] unless he is satisfied that it is a proper and legal charge against state. *In re Huston*, 27 Idaho 231, 147 P. 1064 (1915).

§ 67-1202. Funds of state board of land commissioners. — (1) It is the duty of the treasurer in relation to funds within the control of the state board of land commissioners to receive from and receipt to the board for money and evidences of indebtedness, subject, however, to final payment, which are accepted by banks as cash in the ordinary course of business, and to pay out of such funds orders drawn thereon by the board, but every order must specify the particular fund upon which it is drawn.

(2) The treasurer is authorized to invest endowment funds as directed by the endowment fund investment board, or as directed by the state board of land commissioners if not otherwise provided for by law. The costs of investing funds pursuant to this section shall be paid from the funds invested or the earnings on such funds. Any earnings on endowment funds shall be deposited and distributed in accordance with [section 57-723A, Idaho Code](#).

(3) It is the duty of the treasurer to serve as the custodian of the public school [permanent] endowment fund. The treasurer may request any records of the state board of land commissioners related to such fund and any financial records of a bank or trust company keeping custody of the assets of the public school permanent endowment fund pursuant to [section 57-721, Idaho Code](#).

History.

Based upon 1909, p. 360, §§ 2, 3, and 1909, p. 363, § 1; compiled and reen. C.L., § 117a; C.S., § 158; I.C.A., § 65-1102; am. 2007, ch. 284, § 1, p. 814; am. 2016, ch. 167, § 2, p. 462.

STATUTORY NOTES

Cross References.

State board of land commissioners, Idaho [Const., Art. IX, § 7](#) and [§ 58-101](#).

Endowment fund investment board, [§ 57-718](#).

Amendments.

The 2007 amendment, by ch. 284, in the section catchline, deleted “Purchase of warrants for board” from the end; and deleted the last paragraph, which read: “The state treasurer is authorized and empowered to purchase for the state board of land commissioners for its use and benefit, under written authority from said board, all warrants drawn on the general fund of the state of Idaho.”

The 2016 amendment, by ch. 167, designated the existing provisions of the section as subsection (1) and added subsections (2) and (3).

Compiler’s Notes.

The bracketed insertion near the beginning of subsection (3) was added by the compiler to correct the name of the referenced fund. See § 33-902.

Effective Dates.

Section 6 of S.L. 2016, ch. 167 declared an emergency. Approved March 23, 2016.

§ 67-1203. Establishment of a state treasurer investment advisory board — Members — Qualifications. — There is hereby established in the office of the state treasurer a state treasurer investment advisory board, hereinafter referred to as the “investment board.” This investment advisory board shall consist of the state treasurer, who shall act as chairman of the investment board, and members hereinafter designated who shall be appointed by the governor subject to senate confirmation. The members of the investment advisory board subject to appointment shall be: five (5) public members from the citizenry at large who are knowledgeable and experienced in financial matters and in the placement or management of investment assets and have at least ten (10) years experience in such endeavors.

History.

I.C., § 67-1203, as added by 2014, ch. 130, § 1, p. 363.

STATUTORY NOTES

Prior Laws.

Former § 67-1203, Money to be accompanied by auditor’s certificate, which comprised R.S., § 231, am. R.C., § 118; reen. C.L., § 118; C.S., § 159; I.C.A., § 65-1103, was repealed by S.L. 1990, ch. 21, § 1.

Compiler’s Notes.

Section 4 of S.L. 2014, ch. 130 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-1203A. Board — Appointment of members — Term — Removal — Vacancies — Organization — Quorum — Meetings — Compensation. — (1) The members of the board appointed by the governor shall serve for terms of four (4) years, provided that for the first term the governor shall appoint three (3) members who shall serve for a term of two (2) years, and two (2) members who shall serve for a term of four (4) years. Members of the board shall serve until their successors have been selected and qualified.

(2) A member of the board appointed by the governor shall not hold an office, position or employment in a political party. An appointed member may be removed from the board for cause by a two-thirds (2/3) vote of the full board. A vacancy in the appointive membership of the board during a term thereof shall be filled by appointment by the governor for the unexpired term. A majority of the members of the board shall constitute a quorum for the transaction of business. The meetings of the board shall be held at least quarterly and at other times upon the call of the chairman or a majority of the board. The board members appointed hereunder shall be compensated as provided by [section 59-509\(n\), Idaho Code](#).

History.

[I.C., § 67-1203A](#), as added by 2014, ch. 130, § 1, p. 363.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 2014, ch. 130 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-1203B. Recommendation of the types and kinds of investments.

— (1) The investment board shall recommend the types and kinds of investments that the state treasurer or an investment manager would utilize to manage the idle funds and such other funds as the treasurer is authorized to invest pursuant to sections 67-1210 and 67-1210A, Idaho Code.

(2) The investment board shall recommend investment policies governing the investment of idle funds and other funds accepted for investment by the state treasurer. The recommendations shall pertain to the types, kinds or nature of investment of any of the funds and any limitations, conditions or restrictions upon the methods, practices or procedures for investment, reinvestments, purchases, sales or exchange transactions, provided such recommendations shall not conflict with nor be in derogation of any Idaho constitutional provision or of the provisions of this chapter.

(3) The investment advisory board, in making recommendations, and the state treasurer and all investment managers shall be governed by the Idaho uniform prudent investor act, chapter 5, title 68, Idaho Code. The state treasurer and any investment manager shall invest and manage the assets of the respective funds in accordance with that act and the Idaho constitution.

History.

I.C., § 67-1203B, as added by 2014, ch. 130, § 1, p. 363.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 2014, ch. 130 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 67-1204. Money to be kept in office — Penalty. — (1) All state moneys in the custody of the state treasurer not otherwise deposited or invested as is or may be provided by law shall be kept in a secure location in the office of the state treasurer.

(2) A violation of this section shall subject the state treasurer, upon conviction thereof, to pay a fine of not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), or to imprisonment in the state prison for a period of not less than one (1) nor more than ten (10) years, or to both such fine and imprisonment.

History.

Based on 1905, p. 31, § 1; compiled and reen. R.C., § 118a; reen. C.L., § 118a; C.S., § 160; I.C.A., § 65-1104; am. 1980, ch. 84, § 3, p. 183; am. 2007, ch. 41, § 2, p. 101; am. 2019, ch. 314, § 1, p. 938.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 41, added the subsection (1) and (3) designations to existing provisions and added subsection (2).

The 2019 amendment, by ch. 314, substituted “office” for “vault” in the section heading; substituted “a secure location in the office of the state treasurer” for “the vault and safe as provided for that purpose in the capitol building and in no other place” at the end of subsection (1); deleted former subsection (2), which read: “During the capitol building renovation, beginning in fiscal year 2007, or during relocation due to an emergency, these same moneys as set forth above, shall be kept in a vault within the office of the state treasurer’s temporary location. Upon completion of this renovation, the provisions of subsection (1) of this section shall apply”; and redesignated former subsection (3) as present subsection (2).

Effective Dates.

Section 7 of S. L. 1980, ch. 84 declared an emergency. Approved March 19, 1980.

Section 4 of S.L. 2007, ch. 41 declared an emergency. Approved March 2, 2007.

Section 2 of S.L. 2019, ch. 314 declared an emergency and made the amendment of this section retroactive to January 1, 2019. Approved April 5, 2019.

§ 67-1205. General fund defined — Payment of interest. — The general fund consists of moneys received into the treasury and not specially appropriated to any other fund. All necessary interest on registered warrants drawn upon the general fund shall be paid out of the general fund, and there is hereby appropriated out of the said general fund so much as may be necessary to pay such interest. When the state treasurer pays any such warrant on which interest is due, he must note on the warrant the amount of interest paid thereon and enter on his account the amount of any such interest distinct from the principal.

History.

R.S., § 232; am. R.C., § 119; reen. C.L., § 119; C.S., § 161; I.C.A., § 65-1105; am. 1933 (E.S.), ch. 12, § 1, p. 25.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1933 (E.S.), ch. 12 declared an emergency. Approved July 1, 1933.

CASE NOTES

Amount of appropriation.

Disposition of residue of fund.

Amount of Appropriation.

Where an apparent appropriation from the general fund did not specify a maximum amount, it was not a valid appropriation in the absence of a clearly shown intent to appropriate the entire general fund. **Blaine County Inv. Co. v. Gallet**, 35 Idaho 102, 204 P. 1066 (1922).

Disposition of Residue of Fund.

Where bonds and interest to be paid out of a temporary fund were fully paid, thereafter money appropriated for such fund should be turned into the

general fund of the state, unless otherwise provided by law. [Steunenberg v. Storer](#), 6 Idaho 44, 52 P. 14 (1898).

§ 67-1206. Transfers of balances in funds. — Whenever there shall be or remain in any special or temporary fund created or established by or under any law of the state of Idaho, a surplus or unexpended and unencumbered balance after the purpose or purposes for which such special or temporary fund was provided shall have been fully accomplished, the state controller shall transfer any such balance to the general fund of the state: provided, that where such balance shall consist, in whole or in part, of the proceeds of any bonds then outstanding, the same shall be transferred to the sinking fund provided for the redemption of such bonds.

History.

1905, p. 219, § 1; reen. R.C. & C.L., § 120; C.S., § 162; am. 1921, ch. 127, § 1, p. 311; I.C.A., § 65-1106; am. 1994, ch. 180, § 176, p. 420.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 176 was effective January 2, 1995.

§ 67-1207. Temporary diversion of revenues to cease on accomplishment of purpose. — Whenever revenues are diverted from the general fund of the state, in order to provide a special or temporary fund for a particular purpose or a number of purposes, and such purpose or purposes shall have been fully accomplished, such diversion shall cease, and thereafter such revenues shall accrue to the general fund as they did prior to the time when such diversion was authorized and required.

History.

1905, p. 219, § 2; reen. R.C. & C.L., § 121; C.S., § 163; I.C.A., § 65-1107.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

§ 67-1208. Apportionment of forest reserve funds. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1907, p. 162, §§ 1, 2; am. R.C., § 122; reen. C.L., § 122; C.S., § 164; am. 1921, ch. 47, § 1, p. 75; I.C.A., § 65-1108, was repealed by S.L. 1957, ch. 116, § 6, p. 194.

§ 67-1209. Suspense account. — Any state officer, department, board or institution having or receiving money in trust or for safekeeping pending its final disposition or distribution shall deposit the same in the state treasury in a special suspense account from which it may be withdrawn or distributed under policies and procedures of the state controller.

History.

1919, ch. 181, § 1, p. 557; C.S., § 165; I.C.A., § 65-1109; am. 1976, ch. 42, § 19, p. 90; am. 1994, ch. 180, § 177, p. 420; am. 2003, ch. 32, § 42, p. 115.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 177 was effective January 2, 1995.

CASE NOTES

Private Funds Becoming State Moneys.

When state, in exercise of a governmental function, takes possession of a private fund, pursuant to law, such fund becomes “moneys of the state” within § 67-2737, providing for deposit in designated state depositories. *Chicago, M. & St. P. Ry. v. Public Utils. Comm’n*, 47 Idaho 346, 275 P. 780 (1929).

§ 67-1210. Investment of idle moneys. — It shall be the duty of the state treasurer to invest idle moneys in the state treasury in any of the following:

(a) Bonds, treasury bills, interest-bearing notes, or other obligations of the United States, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) General obligation or revenue bonds of this state, or those for which the faith and credit of this state are pledged for the payment of principal and interest.

(c) General obligation or revenue bonds of any county, city, metropolitan water district, municipal utility district, school district or other taxing district of this state.

(d) Notes, bonds, debentures, or other similar obligations issued by the farm credit system or institutions forming a part thereof under the farm credit act of 1971, [12 U.S.C. 2001-2259](#), and all acts of congress amendatory thereof or supplementary thereto; in bonds or debentures of the federal home loan bank board established under the federal home loan bank act, [12 U.S.C. 1421-1449](#); in bonds, debentures and other obligations of the federal national mortgage association established under the national housing act, [12 U.S.C. 1701-1750g](#), as amended, and in the bonds of any federal home loan bank established under said act and in other obligations issued or guaranteed by agencies or instrumentalities of the government of the state of Idaho or of the United States, including the United States small business administration guaranteed portion of any loan approved by an Idaho banking corporation and by the state treasurer.

(e) Bonds, notes or other similar obligations issued by public corporations of the state of Idaho including, but not limited to, the Idaho state building authority, the Idaho housing and finance association and the Idaho water resource board.

(f) Repurchase agreements covered by any legal investment for the state of Idaho.

(g) Tax anticipation notes and registered warrants of the state of Idaho.

(h) Tax anticipation bonds or notes and income and revenue anticipation bonds or notes of taxing districts of the state of Idaho.

(i) Time deposit accounts and savings accounts in state depositories including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(j) Time deposit accounts and savings accounts of state or federal savings and loan associations located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the federal deposit insurance corporation including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(k) Revenue bonds of institutions of higher education of the state of Idaho.

(l) Share, savings and deposit accounts of state and federal credit unions located within the geographical boundaries of the state in amounts not to exceed the insurance provided by the national credit union share insurance fund and/or any other authorized deposit guaranty corporation, including, but not limited to, accounts on which interest or dividends are paid and upon which negotiable orders of withdrawal may be drawn, and similar transaction accounts.

(m) Money market funds whose portfolios consist of any allowed investment as specified in this section. The securities held in money market portfolios must be dollar-denominated, meaning that all principal and interest payments on such a security are payable to security holders in United States dollars.

The term “idle moneys” means the balance of cash and other evidences of indebtedness that are accepted by banks as cash in the ordinary course of business, in demand deposit accounts, after taking into consideration all deposits and withdrawals, on a daily basis.

The interest received on all such investments, unless otherwise specifically required by law, shall be paid into the general account [fund] of the state of Idaho. Provided, unless otherwise specifically provided by statute, any interest earned on funds received by the state pursuant to a

federal law, regulation, or federal-state agreement that governs disposition of interest earned upon such funds shall be accounted for separately to give effect to the federal law, regulation, or federal-state agreement.

If the interest is to be credited to a separate account, the state treasurer shall charge the account an investment administration fee. The amount of the fee shall be determined annually by the state treasurer and submitted to the board of examiners for approval. The fee shall be expressed as an annual percentage of the average daily balance of the account, including separate investments, if any, of that account. The fee shall be charged monthly in an amount approximately one twelfth (1/12) of the fee that would be payable on an annual basis. The amount of the investment administration fee shall constitute an appropriation from the account for which the investment administration services are rendered.

The state treasurer shall charge an investment administration fee to each such state fund or account, including the general account [fund], which is invested by the office of state treasurer. The investment administration fee shall be determined annually by the state treasurer and submitted to the board of examiners for approval. The fee shall be expressed as an annual percentage of the average daily balance of the fund or account, including separate investments, if any, of that fund or account. The fee shall be charged monthly in an amount approximately one twelfth (1/12) of the fee that would be payable on an annual basis. The amount of the investment administration fee shall constitute an appropriation from the fund or account for which the investment administration services are rendered.

The term “to invest” means to use the idle moneys in the state treasury to buy, sell, including selling before maturity at either a gain or a loss, retain, or exchange any of the investments described in this section, considering the probable safety of the capital, the probable income to be derived, and the liquidity of the assets.

History.

I.C., § 67-1210, as added by 1974, ch. 150, § 2, p. 1371; am. 1975, ch. 2, § 1, p. 5; am. 1976, ch. 42, § 20, p. 90; am. 1979, ch. 35, § 1, p. 51; am. 1980, ch. 83, § 1, p. 182; am. 1983, ch. 38, § 8, p. 89; am. 1985, ch. 155, § 1, p. 413; am. 1986, ch. 74, § 18, p. 220; am. 1986, ch. 88, § 2, p. 257; am. 1992, ch. 84, § 1, p. 266; am. 1993, ch. 310, § 2, p. 1143; am. 1994, ch.

402, § 1, p. 1265; am. 1997, ch. 221, § 1, p. 652; am. 1999, ch. 140, § 1, p. 401; am. 2002, ch. 37, § 1, p. 83; am. 2006, ch. 17, § 1, p. 66; am. 2016, ch. 167, § 3, p. 462; am. 2017, ch. 139, § 1, p. 331; am. 2020, ch. 30, § 2, p. 64.

STATUTORY NOTES

Cross References.

Board of examiners, § 67-2001 et seq.

Idaho state building authority, § 67-6401 et seq.

Idaho water resource board, § 42-1732.

Prior Laws.

Former § 67-1210, which comprised **I.C., § 67-1210**, as added by S.L. 1953, ch. 222, § 2, p. 338; am. 1959, ch. 15, § 1, p. 35; am. 1969, ch. 255, § 4, p. 787; am. 1970, ch. 168, § 1, p. 494, was repealed by S.L. 1974, ch. 150, § 1.

Amendments.

The 2006 amendment, by ch. 17, deleted “but such investment shall not extend beyond seven (7) days” at the end of subsection (e).

The 2016 amendment, by ch. 167, deleted “other than moneys in public endowment funds” following “state treasury” in the introductory paragraph; substituted “Idaho housing and finance association” for “Idaho housing authority” in subsection (e); and substituted “federal deposit insurance corporation” for “federal savings and loan insurance corporation” in subsection (j).

The 2017 amendment, by ch. 139, substituted “which is invested” for “which receives investment income from investments administered” in the next-to-last paragraph of the section.

The 2020 amendment, by ch. 30, deleted “as stipulated in **section 67-3524, Idaho Code**” at the end of the second sentence in the third and fourth undesignated paragraphs following subsection (m).

Compiler’s Notes.

For more on the farm credit system, referred to in subsection (d), see <https://farmcredit.com>.

The federal home loan bank board, referred to in subsection (d), was in 1989 and was superseded by the federal housing finance board and then in 2008 by the federal housing finance agency. See <https://www.fhfa.gov>.

For more information on the federal national mortgage association (Fannie Mae), referred to in subsection (d), see <https://www.fanniemae.com/portal/index.html>.

For more information on the United States small business administration, referred to in subsection (d), see <https://www.sba.gov>.

For further information on the federal deposit insurance corporation, referred to in subsection (j), see <https://www.fdic.gov>.

For more information on insurance provided by the national credit union, share insurance fund, referred to in subsection (l), see <https://www.ncua.gov/support-services/share-insurance-fund>.

The bracketed insertions in the second and fourth undesignated paragraphs following subsection (m) were added by the compiler to correct the name of the referenced fund. See § 67-1205.

Effective Dates.

Section 3 of S.L. 1974, ch. 150 declared an emergency. Approved March 29, 1974.

Section 4 of S.L. 1975, ch. 2 declared an emergency. Approved February 15, 1975.

Section 2 of S.L. 1979, ch. 35 declared an emergency. Approved March 16, 1979.

Section 3 of S.L. 1993, ch. 310 declared an emergency. Approved March 31, 1993.

Section 2 of S.L. 2002, ch. 37 declared an emergency. Approved February 19, 2002.

Section 6 of S.L. 2016, ch. 167 declared an emergency. Approved March 23, 2016.

CASE NOTES

Cited Moon v. State Bd. of Land Comm'rs, 111 Idaho 389, 724 P.2d 125 (1986).

OPINIONS OF ATTORNEY GENERAL

Interest.

Interest earnings upon license revenues in the fish and game account [now fish and game nonexpendable account] are required to be credited to that account. OAG 90-1.

Interest earnings upon balances in the various state accounts are credited to the general account [now general fund] unless otherwise specifically required by law, including federal laws and regulations. OAG 90-1.

Fiscal Year.

Since appropriations are made on a fiscal year basis, it is not a violation of Idaho Const., Art VII, § 13, to make necessary corrections in accounts within a fiscal year. By making corrections within a fiscal year, each account merely receives the correct amount of revenue for the fiscal year and the correct amount of revenue is available for the legislative appropriations made from each account. However, the result is not the same for corrections beyond a fiscal year, as the state is prohibited from refunding to a county the state's share of a court-ordered refund of taxes collected wrongfully in prior years without a legislative appropriation. OAG 90-1.

Water District Funds.

The watermaster of Water District 1 should not have custody of the funds of Water District 1, and assuming Water District 1 has elected to follow § 42-619, a district treasurer should be elected to have custody of Water District 1 funds and to make disbursements from these funds. The district treasurer is prohibited from investing any district funds in common stocks, corporate bonds, mutual funds, or other types of equity securities. OAG 91-7.

§ 67-1210A. Additional allowable investments by the state treasurer.

— (1) In addition to investments enumerated in section 67-1210, Idaho Code, the state treasurer is authorized and empowered to invest state funds or any other funds in his hands, including, but not limited to, funds of any public agency invested pursuant to joint exercise of powers agreements, in prime banker's acceptances and prime commercial paper, sales and repurchase of call options, and bonds, debentures or notes of any corporation organized, domiciled and operating within the United States which have, at the time of their purchase, an A rating or higher by a commonly known rating service. The sale (writing) and repurchase of call options is permitted only when the state treasurer or the joint powers local government pooled fund own the securities on which the option is written.

(2) The provisions of this section shall not be construed to enlarge the powers of other public agencies to invest in prime banker's acceptances, prime commercial paper, sales and repurchase of call options, or bonds, debentures or notes of any corporation unless such investments are made by the state treasurer pursuant to a joint exercise of powers agreement.

History.

I.C., § 67-1210A, as added by 1989, ch. 86, § 1, p. 149; am. 1992, ch. 84, § 2, p. 266; am. 1999, ch. 139, § 1, p. 400; am. 2014, ch. 130, § 2, p. 363; am. 2018, ch. 86, § 1, p. 190.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 130, deleted “securities lending agreements” following “sales and repurchase of call options” in the first sentence in the first paragraph and in the second paragraph; and deleted the former second sentence in the first paragraph, which read: “Such securities lending agreements shall require the borrower to provide and maintain collateral (cash or securities which are authorized investments for the state treasurer) at least equal in value to the value of the securities loaned”.

The 2018 amendment, by ch. 86, designated the two existing paragraphs as subsections (1) and (2) and substituted “domiciled and operating” for “controlled and operating” near the end of the first sentence in subsection (1).

Compiler’s Notes.

Section 4 of S.L. 2014, ch. 130 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 2 of S.L. 1989, ch. 86 declared an emergency. Approved March 27, 1989.

§ 67-1210B. Ability to continue to invest. — In addition to investments enumerated in sections 67-1210 and 67-1210A, Idaho Code, the state treasurer is authorized and empowered to continue investment of state funds or any other funds in his hands under securities lending agreements in place upon the effective date of this section, subject to the provisions of this section. The treasurer shall conduct an orderly program to terminate securities lending. The investment board established by section 67-1203, Idaho Code, may make recommendations for such termination program as set forth in section 67-1203B, Idaho Code. The treasurer shall provide a report to the president pro tempore of the senate and the speaker of the house of representatives by January 1 of each year summarizing the termination program, recommending whether the program continue for the following fiscal year or conclude, and the legislative action recommended to conclude such program.

History.

I.C., § 67-1210B, as added by 2014, ch. 130, § 3, p. 363.

STATUTORY NOTES

Compiler's Notes.

The phrase “the effective date of this section” in the first sentence in the first paragraph refers to the effective date of S.L. 2014, Chapter 130, which was effective July 1, 2014.

Section 4 of S.L. 2014, ch. 130 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-1211. Payment of warrants. — The state treasurer must pay warrants on any of the several funds in his office as prescribed by law, provided that the state treasurer and his employees reserve the right to deny the cashing of warrants in the treasurer's office that total more than two thousand dollars (\$2,000). Any or all warrants totaling more than two thousand dollars (\$2,000), must be cashed or deposited at another financial institution.

History.

1870, p. 41, § 1; R.S., § 235; am. R.C., § 123; reen. C.L., § 123; C.S., § 167; I.C.A., § 65-1111; am. 1976, ch. 42, § 21, p. 90; am. 2004, ch. 171, § 1, p. 549.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2004, ch. 171 declared an emergency. Approved March 23, 2004.

CASE NOTES

Mandamus.

Mandamus will lie to require the treasurer to pay warrants issued by the auditor [now state controller]. *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

§ 67-1212. Unpaid warrants — Interest — Record. — (1) All warrants drawn upon funds in which the balance is insufficient to pay them must be reported to the state treasurer by the state controller. All such warrants shall be registered by the state treasurer as follows: he shall date and sign the report and return the same to the state controller who shall notify the respective payees. It is the duty of the state treasurer to keep a report of all warrants not paid for want of moneys, in which report such warrants shall be listed in numerical order, and when paid the treasurer shall note the amount of interest paid and the date of payment. Any such warrants registered by the state treasurer shall from date of registration until paid bear interest at a rate to be fixed by the state treasurer.

(2) In lieu of registering warrants as provided in subsection (1) of this section, the state treasurer shall have authority to:

(a) Pay such warrants out of any moneys available allowing the fund to remain negative for up to thirty (30) days; the state treasurer shall charge the fund or account for which such moneys are advanced an amount of interest substantially equal to what could have been earned had the advanced moneys been invested, and the amount of the interest shall constitute an appropriation from the fund or account for which the advancement was made. If moneys are not sufficient in the fund after thirty (30) days, unless otherwise excepted by law, the state treasurer shall make inter-fund transfers subject to the following requirements:

(i) All transfers shall be identified by: available funds from which moneys are borrowed, the fund to which the moneys are transferred, amount of transfer, the anticipated interest rate consistent with the available funds' current rate of return, if applicable, the anticipated repayment date and the reason for the transfer;

(ii) Interest, if applicable, shall be paid on any transfer, where required by law, under this provision;

(iii) The treasurer shall maintain an annual report of all such inter-fund transfers.

(b) Issue tax anticipation notes as provided by chapter 32, title 63, or [section 57-1112, Idaho Code](#).

History.

1864, p. 415, § 5; R.S., § 238; am. 1899, p. 228, § 1; am. 1901, p. 107, § 1; am. R.C., § 125; reen. C.L., § 125; am. 1919, ch. 123, § 1, p. 408; C.S., § 168; am. 1927, ch. 129, § 1, p. 172; I.C.A., § 65-1112; am. 1933 (E.S.), ch. 5, § 1, p. 9; am. 1976, ch. 42, § 22, p. 90; am. 1977, ch. 222, § 1, p. 665; am. 1983, ch. 4, § 16, p. 6; am. 1983, ch. 140, § 1, p. 347; am. 1994, ch. 180, § 178, p. 420; am. 2010, ch. 192, § 1, p. 410.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Amendments.

The 2010 amendment, by ch. 192, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Section 1 of S.L. 1983, ch. 4 read: "This act shall be known as 'The 1983 Idaho Emergency Fiscal Responsibility and Recovery Act'".

Effective Dates.

Section 2 of S.L. 1927, ch. 129 declared an emergency. Approved March 2, 1927.

Section 2 of S.L. 1933 (E.S.), ch. 5 declared an emergency. Approved June 21, 1933.

Section 2 of S.L. 1977, ch. 222 declared an emergency. Approved March 31, 1977.

Section 17 of S.L. 1983, ch. 4 read: "(1) An emergency existing therefor, which emergency is hereby declared to exist, Sections 3 and 4 of this act shall be in full force and effect on and after passage and approval, and retroactively to July 1, 1982.

“(2) An emergency existing therefor, which emergency is hereby declared to exist, Section 12 of this act shall be in full force and effect on and after passage and approval, and retroactively to January 1, 1983.

“(3) An emergency existing therefor, which emergency is hereby declared to exist, Sections 2, 5, 6, 7, 8, 9, 10 and 16 [this section] of this act shall be in full force and effect on and after passage and approval.

“(4) An emergency existing therefor, which emergency is hereby declared to exist, Sections 13, 14 and 15 of this act shall be in full force and effect on and after March 1, 1983.

“(5) Section 11 of this act shall be in full force and effect on and after July 1, 1983.”

Section 2 of S. L. 1983, ch. 140 declared an emergency. Approved April 4, 1983.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 178 was effective January 2, 1995.

Section 2 of S.L. 2010, ch. 192 declared an emergency. Approved March 31, 2010.

CASE NOTES

Special Funds.

A capitol building fund was created for a temporary purpose. That purpose having been fully accomplished, the fund ceased to exist and, thereafter, the treasurer was not authorized to place money therein. *Steunenberg v. Storer*, 6 Idaho 44, 52 P. 14 (1898).

OPINIONS OF ATTORNEY GENERAL

Drawdown Procedures.

The constitutional restrictions of fiscal management do not appear to affect participation in the delay of drawdown procedures implemented under [5 U.S.C. § 301](#) and [31 C.F.R. Part 205](#). OAG 83-76.

§ 67-1213. Refusal to pay warrants — Penalty — Cancellation. — If the state treasurer wilfully and unlawfully refuses to pay any warrant lawfully drawn upon the treasury, he forfeits and must pay fourfold the amount, to be recovered by action against the treasurer and his sureties on his official bond or otherwise: provided, that on the first day of July of each year hereafter all warrants and treasurer's checks, which would have been paid if presented, which have been outstanding for a period of one (1) year or more are void. On all such cancelled or void warrants or treasurer's checks, the state treasurer is required to refuse payment and he must plainly mark across the face of every warrant or treasurer's check presented to him for payment the words "not paid, time of redemption expired." Said warrant, if surrendered to the state controller, shall be replaced by a new warrant in like amount.

History.

1864, p. 415, § 10; R.S., § 240; am. R.C., § 126; reen. C.L., § 126; am. 1919, ch. 123, § 2, p. 409; C.S., § 169; I.C.A., § 65-1113; am. 1941, ch. 26, § 1, p. 49; am. 1976, ch. 42, § 23, p. 90; am. 1994, ch. 180, § 179, p. 420.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1941, ch. 26 declared an emergency. Approved February 13, 1941.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 179 was effective January 2, 1995.

§ 67-1214. Delivery of bonds sold outside state. — Whenever bonds sold by the state of Idaho are to be delivered to the purchasers outside the state capital, the state treasurer is authorized and empowered to deliver the said bonds through the agency of any bank qualified as a depository of state moneys. The treasurer, upon deposit of the said bonds with such bank for delivery, shall take a receipt therefor under the seal of the bank, and such receipt shall, pending the payment to the state treasurer of the moneys due from the sale of the said bonds, be a sufficient accounting for the bonds on the part of the treasurer.

History.

1909, p. 361, § 1; reen. C.L., § 126a; C.S., § 170; I.C.A., § 65-1114.

STATUTORY NOTES

Cross References.

Fiscal agency in New York City, § 67-1221.

§ 67-1215. Notice of call of warrants. — Whenever there is an amount to the credit of any state fund as shown by the books of the state treasurer, sufficient to pay the warrant or warrants next entitled to payment therefrom, the state treasurer shall immediately post at the door of his office a notice that such warrant or warrants will be paid on presentation, stating therein the number and series of any such warrant or warrants and fund or funds upon which drawn. Interest on said warrants shall cease ten (10) days after the date of said notice.

History.

1919, ch. 123, § 3, p. 409; C.S., § 172; I.C.A., § 65-1115.

§ 67-1216. Inspection of treasurer's office. — The books, papers, letters and transactions pertaining to the office of treasurer, are at all times during office hours open to the inspection of a committee of the legislature, or either branch thereof, to examine and settle all accounts, or to take copies of the same, and to count all moneys; and when the successor of any such treasurer is appointed and qualified, the state controller must examine and settle all the accounts of such treasurer, remaining unsettled, and give to him a certified statement, showing the balance of moneys, securities and effects for which he is accountable, and which have been delivered to his successor, and report the same to the legislature.

History.

1864, p. 415, § 4; R.S., § 237; am. R.C., § 137; reen. C.L., § 137; C.S., § 173; I.C.A., § 65-1116; am. 1994, ch. 180, § 180, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 180 was effective January 2, 1995.

§ 67-1217. Treasurer's office — Inspection by governor. — The governor of the state is hereby authorized and directed, at any time whenever he considers it necessary for the safe-keeping and disbursement of public moneys, to make an examination of the amount in the possession of the state treasurer, and for that purpose must have access to the same.

History.

1865, p. 141, § 2; R.S., § 242; am. R.C., § 138; reen. C.L., § 138; C.S., § 174; I.C.A., § 65-1117.

§ 67-1218. Seal of office — Certified copies of documents as evidence.

— The treasurer must keep a seal of office for the authentication of all papers, writings and documents required by law to be certified by him; and copies so authenticated and certified, of all papers and documents lawfully deposited in his office, must be received in evidence as the original documents.

History.

1864, p. 415, § 9; R.S., § 239; am. R.C., § 139; reen. C.L., § 139; C.S., § 175; I.C.A., § 65-1118.

§ 67-1219. Deputy state treasurer and additional deputies and employees — Appointment and bond. — The state treasurer may appoint a deputy state treasurer, other deputies, official custodians, assistants and employees who shall perform official duties assigned by such principal, being subject to the same regulations and penalties, and for all whose official acts the state treasurer shall be responsible. The state treasurer shall require all deputies and employees to be bonded by blanket bond or otherwise to the state of Idaho in the time, form and manner as prescribed in chapter 8, title 59, Idaho Code.

The treasurer may fix the compensation for such deputies and other employees within the limits of appropriations made therefor, as is necessary.

History.

1893, p. 150, §§ 1, 2, 3; reen. 1899, p. 220, §§ 1, 2, 3; compiled and reen. R.C., § 140; am. 1915, ch. 114, § 1, p. 261; am. C.L., § 140; C.S., § 176; I.C.A., § 65-1119; am. 1971, ch. 136, § 41, p. 522; am. 1976, ch. 42, § 24, p. 90; am. 1981, ch. 3, § 1, p. 7.

§ 67-1220. Official bond. — The state treasurer must be bonded to the state of Idaho in the time, form and manner prescribed in chapter 8, title 59, Idaho Code; provided that in no event shall the amount of the bond be less than the amount of the blanket bond covering other Idaho state employees.

History.

R.S., § 234 (act Feb. 10, 1887); reen. R.C., § 141; am. 1909, p. 358, § 1; am. 1915, ch. 99, § 1, p. 238; compiled and reen. C.L., § 141; C.S., § 177; I.C.A., § 65-1120; am. 1971, ch. 136, § 42, p. 522; am. 1981, ch. 3, § 2, p. 7.

STATUTORY NOTES

Effective Dates.

Section 5 of S.L. 1981, ch. 3 declared an emergency. Approved February 17, 1981.

CASE NOTES

Acts Covered by Bond.

Duties enjoined upon state treasurer, providing that he shall receive and disburse funds of irrigation district in payment of bonds of district and district's obligations under federal contracts, are official acts as contemplated by statute relative to official bonds which, in the absence of legislative act requiring a special bond, are guaranteed by treasurer's official bond. *Hurlebaus v. American Falls Reservoir Dist.*, 49 Idaho 158, 286 P. 598 (1930).

§ 67-1221. Fiscal agency in New York City. — The state treasurer may appoint a reputable bank in the city of New York as fiscal agent of the state of Idaho. Such fiscal agent may, under the instructions of the state treasurer, receive and pay out moneys for the state of Idaho. The state treasurer shall, in selecting such fiscal agent, obtain the best terms possible for handling any business of the state which requires payment in the city of New York. Any commissions or charges or expenses for services shall be a proper charge, in the following order, against:

(1) The proceeds of any bond or note sale for which such fiscal agent is appointed, or (2) The office appropriation of the state treasurer.

Upon formal application to the state treasurer by the holder of any bond or obligation of the state of Idaho, both principal and interest may be paid in the city of New York by such fiscal agent. In all other respects, the provisions of the state depository law must obtain.

History.

1921, ch. 60, § 1, p. 112; I.C.A., § 65-1121; am. 1976, ch. 42, § 25, p. 90; am. 1977, ch. 224, § 1, p. 669; am. 1983, ch. 69, § 1, p. 154.

STATUTORY NOTES

Cross References.

State depository law, § 67-2723 et seq.

Effective Dates.

Section 3 of S.L. 1921, ch. 60 declared an emergency. Approved March 8, 1921.

Section 42 of S.L. 1976, ch. 42, read: “An emergency existing therefore, which emergency is hereby declared to exist, sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval; sections 16, 34, 35, 36, and 37 of this act shall be in full force and effect on and after July 1, 1977. All other sections shall be in full force and effect on and after July 1, 1976.”

Section 2 of S.L. 1977, ch. 224 declared an emergency. Approved March 31, 1977.

Section 2 of S.L. 1983, ch. 69 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, retroactive to July 1, 1982. Approved March 21, 1983.

Idaho Code § 67-1222

§ 67-1222. Reports to be filed — Bond issues. [Repealed.]

Repealed by S.L. 2010, ch. 58, § 1, effective July 1, 2010.

History.

I.C., § 67-1222, as added by 1989, ch. 238, § 1, p. 582; am. 2005, ch. 390, § 1, p. 1261.

§ 67-1223. Idaho commemorative silver medallions issued by the state treasurer. — (1) The state treasurer is hereby authorized to issue a series of commemorative silver medallions for sale to the public. Each series shall commemorate Idaho history, people or resources and may bear the great seal of the state of Idaho. Medallions shall contain one (1) ounce of fine silver, shall be alloyed to at least ninety percent (90%) fineness, and shall not constitute legal tender. No sales or use tax shall be imposed on the sale or purchase of medallions from the state treasurer or any agent designated by the state treasurer. Only mints which have contracted with the state treasurer may produce Idaho commemorative silver medallions. Any other production of such medallions is a misdemeanor.

(2) The state treasurer shall make such arrangements as the state treasurer considers appropriate for the production, promotion, distribution and sale of medallions, and shall ensure that all moneys received from the sale of medallions are paid into the state treasury and credited to the state veterans cemetery maintenance fund created in [section 65-107, Idaho Code](#). Provided however, the state treasurer is hereby authorized to retain such amounts from the sale of medallions as necessary to repay costs incurred by the state treasurer in the promotion, shipping and handling of medallions. Provided further, if the initial cost to mint a series of medallions is provided by moneys from another state fund, then such other fund shall first be reimbursed for such costs before the remaining revenues are credited to the state veterans cemetery maintenance fund. The revenues shall be used for the purposes designated in [section 65-107, Idaho Code](#).

(3) The state treasurer, in collaboration with a committee of legislators comprised of representatives appointed by the speaker of the house of representatives and senators appointed by the president pro tempore of the senate, shall determine the number of medallions to be issued in a series, shall determine the number of series to be issued, and shall approve the design of medallions for each series.

(4) The state treasurer, as agent of the state of Idaho, is hereby directed to obtain a federal trademark on the design of each series of medallions issued, and is further authorized, after consultation with the attorney general, to

register for a state trademark under chapter 5, title 48, Idaho Code. The design of each series of Idaho commemorative silver medallions is the property of the state of Idaho, and the state of Idaho and the taxpayers shall be deemed to have a trademark on each design. It is the duty of the state treasurer to protect each and every trademark.

(a) If a person reproduces a trademark medallion design and distributes any product using any such design for the purpose of direct or indirect commercial advantage, the person shall owe to the state treasurer, as the agent of the state of Idaho, a royalty fee in addition to the revenues derived from the sale of products using a medallion design. Any person who reproduces a trademark design and distributes any product with a medallion design in violation of the provisions of this subsection (4), shall be deemed to be an infringer of the state of Idaho's trademark. The state treasurer, through the office of the attorney general, is entitled to institute an action for any infringement of that particular right committed while the state treasurer or his designated agent has custody of the trademark.

(b) A court having jurisdiction of a civil action arising under this subsection (4) may grant such relief as it deems appropriate. At any time while an action under this subsection (4) is pending, the court may order the impounding, on such terms as it deems reasonable, of all products in inventory of the infringer which are in violation of law.

(c) An infringer on the state of Idaho's trademark pursuant to this subsection (4) is liable for any profits the infringer has incurred reproducing a trademark design and distributing products using the design for commercial purposes or is liable for statutory damages as provided in paragraph (d) of this subsection (4).

(d) The state treasurer, as agent of the trademark owner, may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to a trademark medallion design for which any one (1) infringer is liable individually, or for which any two (2) or more infringers are liable jointly and severally, in a sum of not less than two hundred fifty dollars (\$250) or more than ten thousand dollars (\$10,000), as the court considers just.

(e) In any civil action under this subsection (4), the court may allow the recovery of full costs by or against any party and may also award reasonable attorney's fees to the prevailing party as part of the costs.

(5) Medallions in the first series issued shall commemorate "Support of Idaho's Heroes" to honor the courage and sacrifice of all Idaho servicemen and veterans of the United States armed forces and Idaho military branches of the armed services.

History.

I.C., § 67-1223, as added by 2003, ch. 369, § 2, p. 979; am. 2004, ch. 292, § 1, p. 816.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Effective Dates.

Section 4 of S.L. 2003, ch. 369 declared an emergency. Approved May 8, 2003.

Section 2 of S.L. 2004, ch. 292 declared an emergency. Approved March 23, 2004.

§ 67-1224. Idaho credit rating enhancement committee — Membership — Compensation — Quorum — Meetings — Personnel.

— (1) There is hereby established in the office of the state treasurer the Idaho credit rating enhancement committee. The committee shall consist of the following members: the state treasurer, the administrator of the division of financial management, one (1) senator appointed by the president pro tempore of the senate and one (1) member of the house of representatives appointed by the speaker of the house of representatives. Other members of the committee shall be appointed by the governor after considering recommendations of the state treasurer and shall consist of one (1) member from each of the following entities knowledgeable on matters of public finance, including the Idaho state municipal bond bank [Idaho bond bank authority], Idaho housing and finance association, Idaho state building authority, the department of education as a representative of the school bond guarantee fund [public school guarantee fund] and one (1) member at large.

(2) The term of an appointed member is two (2) years, but an appointed member serves at the pleasure of the appointing authority. Before the expiration of the term of an appointed member, the appointing authority shall appoint a successor. If there is a vacancy for any reason in the office of an appointed member, the appointing authority shall make an appointment to become immediately effective for the unexpired term.

(3) A member of the committee shall be entitled to compensation and expenses as provided in [section 59-509\(b\), Idaho Code](#), which shall be paid by the state treasurer.

(4) The state treasurer shall serve as chairperson of the committee, with such powers and duties necessary for the performance of that office as the committee determines appropriate.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) The committee shall meet at times and places specified by the call of the chairperson or by a majority of the members of the committee.

(7) The office of the state treasurer shall provide the committee with office space and clerical and other administrative support.

History.

I.C., § 67-1224, as added by 2005, ch. 159, § 1, p. 491; am. 2013, ch. 219, § 1, p. 514.

STATUTORY NOTES

Cross References.

Department of education, § 33-125.

Division of financial management, § 67-1910.

Idaho housing and finance association, § 67-6201 et seq.

Idaho state building authority, § 67-6401 et seq.

Amendments.

The 2013 amendment, by ch. 219, deleted the first sentence in subsection (6), which read, “The committee shall meet at least once every six (6) months at a time and place determined by the committee.”

Compiler’s Notes.

The first bracketed insertion in the last sentence in subsection (1) was added by the compiler to correct the name of the referenced entity. See § 67-8701 et seq.

The second bracketed insertion near the end of subsection (1) was added by the compiler to correct the name of the referenced fund. See § 33-5309.

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-1225. Powers and duties of credit rating enhancement committee. — The Idaho credit rating enhancement committee shall advise the governor and the legislature regarding policies and action that enhance and preserve the state’s credit rating and maintain the future availability of low-cost capital financing. In carrying out this function, the committee shall report findings and recommendations to the governor and the speaker of the house of representatives and the president pro tempore of the senate by December 1 of each year.

History.

I.C., § 67-1225, as added by 2005, ch. 159, § 2, p. 491; am. 2013, ch. 219, § 2, p. 514; am. 2018, ch. 85, § 1, p. 190.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 219, deleted former subsections (1) and (2), relating to debt capacity targets, and deleted the designation from the remaining provisions, former subsection (3).

The 2018 amendment, by ch. 85, substituted “December 1” for “August 1” near the end of the section.

§ 67-1226. Local government investment pool. — The state treasurer is hereby authorized to establish and maintain a pooled investment program for the benefit of public agencies including, but not limited to, municipalities, districts, political subdivisions, political or public corporations, and public charter schools of the state of Idaho. Any public agency is hereby authorized to invest funds not immediately required for activities of such entity in the pooled investment program. Notwithstanding the provisions of any statute of the state of Idaho to the contrary, the state treasurer may invest the funds of a pooled investment program in any investment the state treasurer is authorized by law to acquire using the idle moneys of the state of Idaho. The costs of investing such funds pursuant to this section shall be paid from the funds invested or the earnings on such funds.

History.

I.C., § 67-1226, as added by 2011, ch. 213, § 1, p. 600; am. 2017, ch. 138, § 1, p. 331.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 138, in the first sentence, inserted “public agencies including, but not limited to” and “and public charter schools” and substituted “public agency” for “municipality, district, political subdivision or political or public corporation” in the second sentence.

§ 67-1227. Investment at request of state agency. — At the request of an agency, the state treasurer is hereby authorized to accept for investment the funds of an Idaho agency or funds held in trust by an Idaho agency that are not idle moneys subject to investment under section 67-1210, Idaho Code. The state treasurer may invest the funds submitted for investment under this section in any investment the treasurer is authorized by law to acquire using the idle moneys of the state of Idaho. The state treasurer may pool funds submitted for investment under this section with funds invested by the state treasurer under any program authorized by this chapter. The treasurer may require the agency certify its authority to submit the funds for investment by the state treasurer and its authority to invest the funds in the investments authorized by this section. The costs of investing funds pursuant to this section shall be paid from the funds invested or the earnings on such funds or from a fund designated in advance by the agency.

History.

I.C., § 67-1227, as added by 2016, ch. 167, § 4, p. 462.

STATUTORY NOTES

Effective Dates.

Section 6 of S.L. 2016, ch. 167 declared an emergency. Approved March 23, 2016.

§ 67-1228. Treasurer's administrative fund. — (1) There is hereby created in the state treasury the treasurer's administrative fund to which shall be credited:

(a) Fees and charges collected pursuant to law to cover costs associated with services or administration provided by the treasurer and not paid by the general fund including, but not limited to, moneys paid to the treasurer pursuant to sections 33-5409, 67-1202, 67-1227 and 67-8729, Idaho Code; and (b) All other moneys as may be provided by law.

(2) Moneys in the fund shall be continuously appropriated to the treasurer and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall only be used to pay costs associated with the services or administration provided by the treasurer pursuant to law and not paid by the general fund.

History.

I.C., § 67-1228, as added by 2016, ch. 167, § 5, p. 462.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Effective Dates.

Section 6 of S.L. 2016, ch. 167 declared an emergency. Approved March 23, 2016.

§ 67-1229. Interaccount transactions. — Any unit of the treasurer providing services to departments of state government as authorized in this chapter may charge and receive payment for services and associated costs for a period of time not to exceed the current appropriation of the department requesting such services. Such payments may be used for direct costs, personnel costs and operating expenditures of the unit providing the services.

History.

I.C., § 67-1229, as added by 2017, ch. 236, § 2, p. 582.

Chapter 13
CUSTODIAN FOR MONEY AND SECURITIES
HELD BY STATE

Sec.

67-1301. State treasurer appointed as custodian.

67-1302. Delivery of money and securities to state treasurer — Receipts.

67-1303. Duties of state treasurer connected with custody.

67-1304. Custodians of federally insured deposits.

§ 67-1301. State treasurer appointed as custodian. — The treasurer of the state of Idaho, where not otherwise provided by law, is hereby appointed custodian for all money, bonds, debentures or other securities, the property of the state of Idaho by or through any department or institution of the state of Idaho, or taken to be held as collateral for the security of the state of Idaho. The treasurer may appoint additional or multiple custodians to act with him in carrying out the purposes of this act.

History.

1923, ch. 125, § 1, p. 170; I.C.A., § 65-1201; am. 1981, ch. 3, § 3, p. 7.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term “this act” at the end of this section refers to S.L. 1981, Chapter 3, which is codified as §§ 67-1219, 67-1220, 67-1301, and 67-1303. Probably, the reference should be to “this chapter,” being chapter 13, title 67, Idaho Code.

§ 67-1302. Delivery of money and securities to state treasurer — Receipts. — All officers or employees of the state of Idaho receiving such money, bonds, debentures or other securities on behalf of the state shall, where not otherwise provided by law, deliver the same to the state treasurer, who shall issue to the officer or employee making such delivery his receipt covering same.

History.

1923, ch. 125, § 2, p. 170; I.C.A., § 65-1202.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

§ 67-1303. Duties of state treasurer connected with custody. — It shall be the duty of the state treasurer, and such additional or multiple custodians appointed by the treasurer to act with him in carrying out the purposes of this act, after receiving such money, bonds, debentures or other securities to properly protect the state by complying with all of the necessities and duties devolving upon the holder of such money, bonds, debentures or other securities, and in the case of securities held for collateral, to redeliver same to the proper state officer or employee upon demand, getting therefrom his receipt for the same, to the end that said officer or employee may redeliver same to the original depositor, upon the fulfillment of the conditions under which said collateral was held by the state.

History.

1923, ch. 125, § 3, p. 170; I.C.A., § 65-1203; am. 1981, ch. 3, § 4, p. 7.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term “this act” near the beginning of this section refers to S.L. 1981, Chapter 3, which is codified as §§ 67-1219, 67-1220, 67-1301, and 67-1303. Probably, the reference should be to “this chapter,” being chapter 13, title 67, Idaho Code.

Effective Dates.

Section 4 of S.L. 1923, ch. 125 declared an emergency. Approved March 10, 1923.

Section 5 of S.L. 1981, ch. 3 declared an emergency. Approved February 17, 1981.

§ 67-1304. Custodians of federally insured deposits. — Whenever the time deposits made by the state treasurer with financial institutions may be insured in whole or in part by the federal deposit insurance corporation, the federal savings and loan insurance corporation, or other federal program, and the amount of insurance available may be affected by the appointment of multiple custodians, the state treasurer shall appoint multiple custodians in such a manner as to maximize the amount of insurance provided.

History.

I.C., § 67-1304, as added by 1985, ch. 170, § 1, p. 449.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Federal References.

The federal deposit insurance corporation, referred to in this section, is established at [12 U.S.C.S. § 1811](#).

Compiler's Notes.

The federal savings and loan insurance corporation, referred to in this section, was abolished by [P.L. 101-73](#) in 1989 and its insurance duties were transferred to the federal deposit insurance corporation. See <https://www.fdic.gov>.

Effective Dates.

Section 2 of S.L. 1985, ch. 170 declared an emergency. Approved March 21, 1985.

Chapter 14

ATTORNEY GENERAL

Sec.

67-1401. Duties of attorney general.

67-1402. Official bond.

67-1403. [Vetoed.]

67-1404. [Reserved.]

67-1405. Duties of the attorney general regarding child sexual abuse reports.

67-1406. Employment of attorneys restricted — Exemptions.

67-1407. Fees assessed for services.

67-1408. Billing of state entities for legal services.

67-1409. Contracts for legal services.

67-1410. Internet crimes against children unit.

67-1411. Internet crimes against children fund.

67-1412. Definitions.

67-1413. Sobriety and drug monitoring program created.

67-1414. Rules — Testing fees.

67-1415. Authority of court and other entities to order participation in sobriety and drug monitoring program.

67-1416. Collection, distribution and use of testing fees.

§ 67-1401. Duties of attorney general. — Except as otherwise provided in this chapter, it is the duty of the attorney general:

(1) To perform all legal services for the state and to represent the state and all departments, agencies, offices, officers, boards, commissions, institutions and other state entities in all courts and before all administrative tribunals or bodies of any nature. Representation shall be provided to those entities exempted pursuant to the provisions of [section 67-1406, Idaho Code](#). Whenever required to attend upon any court or administrative tribunal, the attorney general shall be allowed necessary and actual expenses, all claims for which shall be audited by the state board of examiners.

(2) To advise all departments, agencies, offices, officers, boards, commissions, institutions and other state entities in all matters involving questions of law.

(3) After judgment in any of the causes referred to in this chapter, to direct the issuing of such process as may be necessary to carry the same into execution.

(4) To account for and pay over to the proper officer all moneys received which belong to the state.

(5) To enforce the Idaho charitable solicitation act, chapter 12, title 48, Idaho Code; the Idaho nonprofit hospital sale or conversion act, chapter 15, title 48, Idaho Code; to supervise charitable organizations, as such term is defined in [section 48-1903\(4\), Idaho Code](#); and to enforce whenever necessary any noncompliance or departure from the charitable purpose of such charitable organizations as set forth and provided in chapter 19, title 48, Idaho Code.

(6) To give an opinion in writing, without fee, to the legislature or either house thereof, or any senator or representative, and to the governor, secretary of state, treasurer, state controller, and the superintendent of public instruction, when requested, upon any question of law relating to their respective offices. The attorney general shall keep a record of all written opinions rendered by the office and such opinions shall be compiled

annually and made available for public inspection. All costs incurred in the preparation of said opinions shall be borne by the office of the attorney general. A copy of the opinions shall be furnished to the supreme court and to the state librarian.

(7) When required by the public service, to repair to any county in the state and assist the prosecuting attorney thereof in the discharge of duties.

(8) To bid upon and purchase, when necessary, in the name of the state, and under the direction of the state controller, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction in whole or in part of such judgments as the consideration for such purchases.

(9) Whenever the property of a judgment debtor in any judgment mentioned in subsection (8) of this section has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance, taking precedence of the judgment in favor of the state, under the direction of the state controller, to redeem such property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

(10) When necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as may be necessary to set aside and annul all conveyances fraudulently made by such judgment debtors; the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

(11) To exercise all the common law power and authority usually appertaining to the office and to discharge the other duties prescribed by law.

(12) To report to the governor, at the time required by this section, the condition of the affairs of the attorney general's office and of the reports received from prosecuting attorneys.

(13) To appoint deputy attorneys general and special deputy attorneys general and other necessary staff to assist in the performance of the duties

of the office. Such deputies and staff shall be nonclassified employees within the meaning of [section 67-5302, Idaho Code](#).

(14) To establish a medicaid fraud control unit pursuant to the provisions of [section 56-226, Idaho Code](#), and to exercise concurrent investigative and prosecutorial authority and responsibility with county prosecutors to prosecute persons for the violation of the criminal provisions of chapter 2, title 56, Idaho Code, and for criminal offenses that are not defined in said chapter 2, title 56, Idaho Code, but that involve or are directly related to the use of medicaid program funds or services provided through the medicaid program.

(15) To seek injunctive and any other appropriate relief as expeditiously as possible to preserve the rights and property of the residents of the state of Idaho, and to defend as necessary the state of Idaho, its officials, employees and agents in the event that any law or regulation violating the public policy set forth in the Idaho health freedom act, chapter 90, title 39, Idaho Code, is enacted by any government, subdivision or agency thereof.

(16) To establish an internet crimes against children unit pursuant to the provisions of [section 67-1410, Idaho Code](#), and to exercise concurrent investigative and prosecutorial authority and responsibility with county prosecutors to prosecute persons for the violation of the criminal provisions of sections 18-1507, 18-1509A, 18-1513 and 18-1515, Idaho Code, which may also encompass criminal offenses that are not defined in said sections but that involve or are directly related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses.

(17) To respond to allegations of violation of state law by elected county officers, to investigate such claims, to issue appropriate findings and to refer such cases for further investigation and prosecution pursuant to [section 31-2002, Idaho Code](#).

(18) To establish a sobriety and drug monitoring program to reduce the number of people on Idaho's highways who drive under the influence of alcohol or drugs, reduce the number of repeat offenders for certain offenses in which the abuse of alcohol or drugs was a contributing factor, and increase pretrial and posttrial options for prosecutors and judges in responding to repeat DUI offenders and offenders for certain crimes in which the abuse of alcohol or drugs was a contributing factor in the

commission of the crime, and to adopt such rules and establish such fees as are necessary for the operation of said program, as set forth by law.

History.

1884, p. 31, § 3; R.S., § 250; am. 1901, p. 162, § 1; compiled and reen. R.C., § 142; reen. C.L., § 142; C.S., § 178; am. 1923, ch. 110, § 1, p. 139; I.C.A., § 65-1301; am. 1963, ch. 161, § 1, p. 475; am. 1972, ch. 203, § 1, p. 561; am. 1976, ch. 366, § 1, p. 1202; am. 1986, ch. 6, § 1, p. 44; am. 1994, ch. 180, § 181, p. 420; am. 1995, ch. 141, § 1, p. 599; am. 1998, ch. 245, § 1, p. 806; am. 2001, ch. 61, § 2, p. 112; am. 2007, ch. 341, § 10, p. 1000; am. 2010, ch. 46, § 2, p. 84; am. 2013, ch. 245, § 1, p. 593; am. 2014, ch. 240, § 3, p. 604; am. 2014, ch. 280, § 3, p. 707; am. 2015, ch. 244, § 45, p. 1008; am. 2020, ch. 321, § 2, p. 921.

STATUTORY NOTES

Cross References.

Children's trust account board, voting member, § 39-6001.

Crime, moneys received as a result of commission, action to require deposit in escrow account, § 19-5301.

Declaratory judgment, constitutional question involved, attorney general may be heard, § 10-1211.

Disinterment of bodies for legal purposes, special permits, § 39-269.

Election, § 34-612.

Elections, recount of ballots, duties, § 34-2301 et seq.

Farm produce price discrimination, prosecution for violations of act upon complaint of department of agriculture, § 22-1604.

Forest protective districts, enforcement of liens against property of nonresidents in, § 38-128.

Gasoline, lubricating oil and fuel oil, adulteration and misbranding, prosecutions under law concerning, § 37-2509.

Industrial commission, duty to represent, § 72-518.

Initiative and referendum petitions, preparation of ballot title, § 34-1809.

Liquor Act, enforcement of, § 23-801 et seq.

Loyalty oath, § 59-401.

Member of board of examiners, Idaho [Const., Art. IV, § 18](#).

Plumbing law, representing state in all actions under, § 54-2629.

Secretary of state, § 67-901 et seq.

Social Work Licensing Act, duties, § 54-3216.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

State librarian, § 33-2504.

State treasurer, § 67-1201 et seq.

Subpoenas on behalf of state, prepayment of fees not required, § 9-1605.

Superintendent of public instruction, § 67-1501 et seq.

Usurpation of state offices, attorney general to bring action, § 6-602.

Worker's compensation, industrial administration fund, duties, §§ 72-525 to 72-527.

Worker's compensation, industrial special indemnity fund, duties, § 72-330.

Worker's compensation law, enforcement, duty, § 72-518.

Amendments.

The 2007 amendment, by ch. 341, added subsection (14).

The 2010 amendment by ch. 46, added subsection (15).

The 2013 amendment, by ch. 245, substituted “this chapter” for “the first subdivision” in subsection (3); substituted “subsection (8) of this section” for “the preceding subdivision” in subsection (9); substituted “section” for “code” in subsection (12); and added subsection (16).

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 240, added subsection [(18)](17).

The 2014 amendment, by ch. 280, added subsection (17).

The 2015 amendment, by ch. 244, renumbered the last subsection from “(17)” to “(18)”.

The 2020 amendment, by ch. 321, rewrote subsection (5), which formerly read: “To supervise nonprofit corporations, corporations, charitable or benevolent societies, person or persons holding property subject to any public or charitable trust and to enforce whenever necessary any noncompliance or departure from the general purpose of such trust and, in order to accomplish such purpose, said nonprofit corporations, corporations, charitable or benevolent societies, person or persons holding property subject to any public or charitable trust are subject at all times to examination by the attorney general, on behalf of the state, to ascertain the condition of its affairs and to what extent, if at all, said trustee or trustees may have failed to comply with trusts said trustee or trustees have assumed or may have departed from the general purpose for which it was formed. In case of any such failure or departure, the attorney general shall institute, in the name of the state, any proceeding necessary to enforce compliance with the terms of the trust or any departure therefrom.”

Legislative Intent.

Section 2 of S.L. 2014, ch. 240 provided: “Legislative Intent. The Legislature declares that driving in Idaho is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities. The Legislature further declares that the purpose of this act is to protect the public health and welfare by reducing the number of people on Idaho’s highways who drive under the influence of alcohol or dangerous drugs; to protect the public health and welfare by reducing the number of repeat offenders for certain offenses in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; and to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders and offenders for certain crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.”

Compiler’s Notes.

Section 1 of S.L. 2014, ch. 240 provided: “Short Title. This act shall be known and may be cited as the ‘Idaho 24/7 Sobriety and Drug Monitoring Program Act.’”

Effective Dates.

Section 2 of S.L. 1972, ch. 203 provided the act should take effect on and after July 1, 1972.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 181 was effective January 2, 1995.

Section 7 of S.L. 1995, ch. 141 provided that the act would be in full force and effect on July 1, 1995 and that the provisions of section 6 “shall govern fiscal matters only during fiscal year 1996”.

CASE NOTES

Authorization of appeals.

Cases in supreme court.

Charitable trusts.

Delegation of duties by legislature.

Duty to defend.

In general.

Private interests.

Prosecution of state penal laws.

Right to file cross-complaint.

Staff members of attorney general.

State agencies.

State immunity.

Authorization of Appeals.

Where the attorney general of the state of Idaho had not participated in a county prosecuting attorney's appeal from an order which terminated a criminal action by joining in the notice of appeal, the appeal was not authorized by the attorney general and was, therefore, dismissed. *State v. Ott*, 100 Idaho 795, 605 P.2d 973 (1980).

Cases in Supreme Court.

Attorney general is attorney for a county on an appeal from a judgment in a suit in which county is a party and must be served as such with the transcript and brief of appellant. *Corker v. Elmore County*, 11 Idaho 787, 84 P. 509 (1906).

Attorney general is attorney for state on an appeal from a judgment of conviction in a criminal case and must be served with transcript and appellant's brief. *State v. Miles*, 11 Idaho 784, 83 P. 697 (1906); *State v. Squires*, 15 Idaho 327, 97 P. 411 (1908); *State v. Burgy*, 22 Idaho 586, 126 P. 779; 22 Idaho 588, 126 P. 780 (1912); *State v. Cole*, 31 Idaho 603, 174 P. 131 (1918).

Charitable Trusts.

The 1963 amendment to this section added the duty of enforcing charitable trusts to the duties of the attorney general. *Sawyer v. Huff*, 86 Idaho 328, 386 P.2d 563 (1963).

The supervisory power over charitable trusts given the attorney general by this section does not prevent a bequest to "some worthy, charitable, or public institution or institutions to be selected by my executors and my attorney" from being invalid because of indefiniteness of beneficiary. *Yribar v. Fitzpatrick*, 91 Idaho 105, 416 P.2d 164 (1966).

Delegation of Duties by Legislature.

Legislature was authorized to delegate to attorney general the task of selecting short title for initiated measures. *In re Idaho State Fed'n of Labor*, 75 Idaho 367, 272 P.2d 707 (1954).

Duty to Defend.

The attorney general properly defended two judges in an action wherein plaintiff alleged that the judges acted wrongfully by ruling against him in a bank's suit to foreclose a mortgage. *Parsons v. Beebe*, 116 Idaho 551, 777 P.2d 1224 (Ct. App. 1989).

In General.

This section does not purport to authorize the attorney general to serve in the capacity of a litigant unless he is a "party" in his official capacity. *Idaho ex rel. Robson v. First Sec. Bank*, 315 F. Supp. 274 (D. Idaho 1970).

The attorney general is responsible for the legal representation for all state agencies. *Kelso v. Lance*, 134 Idaho 373, 3 P.3d 51 (2000).

Private Interests.

In seeking to represent the interests of private entities insured by the state insurance fund, the attorney general was not improperly representing the "people of the state" as a whole. *Selkirk Seed Co. v. Forney*, 134 Idaho 98, 996 P.2d 798 (2000).

The attorney general may represent private interests in conjunction with state departments, agencies and commissions. *Selkirk Seed Co. v. Forney*, 134 Idaho 98, 996 P.2d 798 (2000).

Prosecution of State Penal Laws.

Through a series of statutes, the state has made it the primary duty of the county prosecutor to enforce the state penal laws, and the attorney general is not authorized to assume the full duties of prosecution from the county prosecutor. *Newman v. Lance*, 129 Idaho 98, 922 P.2d 395 (1996).

Right to File Cross-Complaint.

The attorney general had the right and authority to file a cross-complaint, and, thereafter, the court had jurisdiction over the state for the purposes of granting or denying the relief prayed for by the state in its cross-complaint. *Howard v. Cook*, 59 Idaho 391, 83 P.2d 208 (1938).

Staff Members of Attorney General.

A motion to dismiss was without merit and was denied where the record of the case showed that a member of the attorney general's staff represented appellant in the district court and that the appeal was taken with the full

knowledge of the attorney general in that he, through a member of his staff, specifically requested in writing that the attorney representing appellant be substituted for the attorney general as attorneys of record for appellant on this appeal, such attorneys representing appellant being members in good standing of the Idaho state bar, appearing without cost to the state of Idaho, and the appellant and the attorney general both being personally present during the oral presentation of this appeal. *Caesar v. Williams*, 84 Idaho 254, 371 P.2d 241 (1962).

State Agencies.

When determining the status of the state insurance fund (SIF) for a potential conflict of interest pursuant to legal representation, the SIF is considered a state agency. *Kelso v. Lance*, 134 Idaho 373, 3 P.3d 51 (2000).

Given the broad language employed in this section and the extent to which the state government is involved with the state insurance fund (SIF), the attorney general acted within the bounds of statutory authority in contracting to represent SIF and its non-governmental insureds. *Selkirk Seed Co. v. Forney*, 134 Idaho 98, 996 P.2d 798 (2000).

State Immunity.

Since the attorney general is powerless to waive this state's common law sovereign immunity in state court, a fortiori he is powerless to waive this state's **eleventh amendment** immunity. *Mazur v. Hymas*, 678 F. Supp. 1473 (D. Idaho 1988).

Cited *Kootenai County v. Hope Lumber Co.*, 13 Idaho 262, 89 P. 1054 (1907); *Hedin v. Westdala Lutheran Church*, 59 Idaho 241, 81 P.2d 741 (1938); *State v. Taylor*, 59 Idaho 724, 87 P.2d 454 (1939); *Taylor v. State*, 62 Idaho 212, 109 P.2d 879 (1941); *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960); *Cenarrusa v. Andrus*, 99 Idaho 404, 582 P.2d 1082 (1978); *State ex rel. Haman v. Fox*, 100 Idaho 140, 594 P.2d 1093 (1979).

OPINIONS OF ATTORNEY GENERAL

When Required.

Attorney general is required to give opinions to legislature, state officers, and heads of state departments only when requested to do so in writing and

then only in matters relating to their duties or matters in which state is a party or is directly interested. The custom seems to prevail (based upon a misunderstanding of the duties of attorney general) whereby county and school district officers and private citizens write for opinions upon nearly every conceivable subject. OAG 1897-1898, p. 5; OAG 1901-1902, p. 27; OAG 1905-1906, pp. 117, 122, 133, 135, 137; OAG 1907-1908, p. 6.

§ 67-1402. Official bond. — The attorney general must be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

History.

R.S., § 252; reen. R.C. & C.L., § 143; C.S., § 179, I.C.A., § 65-1302; am. 1971, ch. 136, § 43, p. 522.

§ 67-1403. Legal services for state to be furnished by attorney general. [Vetoed.]

STATUTORY NOTES

Compiler's Notes.

The governor's veto of S.L. 1976, ch. 366 (S.B. 1428), § 2, which enacted this section, was upheld by the supreme court in *Cenarrusa v. Andrus*, 99 Idaho 404, 582 P.2d 1082 (1978), overruled on other grounds, *Nate v. Denney*, 2017 Ida. LEXIS 238 (July 18, 2017).

§ 67-1404. [Reserved.]

§ 67-1405. Duties of the attorney general regarding child sexual abuse reports. — (1) The department of health and welfare, each city police department, each county sheriff and the Idaho state police shall submit to the office of the attorney general a report of each child sexual abuse incident reported to each agency of state or local government. The report shall contain such information as specified by the attorney general. It shall be the duty of the attorney general to the greatest extent possible to use and develop the information required in this section on forms currently in use by each governmental entity, thus avoiding unnecessary paperwork.

(2) It shall be the duty of each county prosecuting attorney to submit to the office of the attorney general a report of each child sexual abuse case handled by the prosecuting attorney. The report required pursuant to this section shall be designed by the attorney general to minimize the paperwork impact on each county prosecutor.

(3) The administrative office of the courts shall submit to the office of the attorney general a report showing the disposition of each child sexual abuse case handled by each of the district courts throughout the state. This reporting requirement may be satisfied by submission of a copy of a judgment made and entered in each case.

(4) The commission of pardons and parole shall submit to the office of the attorney general a report showing the release or discharge of any individual convicted of a crime involving child sexual abuse. Such report shall be designed to minimize the paperwork impact upon the commission.

(5) The office of the attorney general in conjunction with the governor of the state of Idaho shall report, prepare and submit to the legislature a report showing all of the statistical data and information compiled as a result of the reporting requirement contained within this section. This report shall be prepared and submitted no later than January 20 of each year.

History.

I.C., § 67-1405, as added by 1989, ch. 382, § 2, p. 952; am. 2000, ch. 469, § 132, p. 1450; am. 2015, ch. 244, § 46, p. 1008.

STATUTORY NOTES

Cross References.

Administrative director of the courts, § 1-611 et seq.

Department of health and welfare, § 56-1001 et seq.

Idaho state police, § 67-2901 et seq.

Commission of pardons and parole, § 20-210.

Amendments.

The 2015 amendment, by ch. 244, substituted “commission of pardons and parole” for “commission on pardons and parole” near the beginning of subsection (4).

Legislative Intent.

Acts 1989, ch. 382, § 1 provided: “During the first regular session of the centennial legislature, many bills were proposed dealing with the problem of child sexual abuse. The legislature found that information regarding child sexual abusers was incomplete. The purpose of this act is to provide a mechanism whereby information can be collected and collated on a statewide basis so that future policy decisions of the legislature can be based upon a more substantial body of evidence.”

§ 67-1406. Employment of attorneys restricted — Exemptions. —

Notwithstanding any other provision of law to the contrary, no department, agency, office, officers, board, commission, institution or other state entity shall be represented by or obtain its legal advice from an attorney at law other than the attorney general except as follows:

(1) The legislative and judicial branches of government and the governor may employ attorneys other than those under the supervision of the attorney general, and such attorneys may appear in any court. However, such entities may, upon request, utilize the attorney general's legal services.

(2) Those state entities within the department of self-governing agencies which are enumerated in sections 67-2601(2)(a), 67-2601(2)(b) and 67-2601(3), Idaho Code, and colleges and universities may employ private counsel to advise them and represent them before courts of the state of Idaho. Such entities may also obtain legal services from the attorney general on such terms as the parties may agree.

(3) Whenever the attorney general determines that it is necessary or appropriate in the public interest, the attorney general may authorize contracts for legal services pursuant to the provisions of [section 67-1409, Idaho Code](#).

(4) The provisions of [section 67-1401, Idaho Code](#), shall govern the normal relationship between the attorney general and the state entities in the executive branch of state government. However, if after consultation with the attorney general, the governor determines in his sole judgment, which shall not be subject to judicial review, that counsel assigned to represent or give legal advice to any state entity, other than the lieutenant governor, state controller, state treasurer, secretary of state, attorney general, and the superintendent of public instruction, cannot effectively advocate or pursue the policies of the governor, the governor shall request that other counsel be provided by the attorney general, and the attorney general shall provide from within the office of the attorney general or obtain from outside the office of the attorney general, depending upon the request of the governor, qualified counsel acceptable to the governor to represent such state entity.

(5) Any separate counsel employed pursuant to the foregoing exceptions shall be compensated with funds appropriated to such state entity, unless such separate counsel shall have been employed at the request or convenience of the attorney general or because of a conflict in representation by the attorney general.

History.

I.C., § 67-1406, as added by 1995, ch. 141, § 2, p. 599; am. 2001, ch. 61, § 3, p. 112.

STATUTORY NOTES

Cross References.

Lieutenant governor, § 67-809.

Secretary of state, § 67-901 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Superintendent of public instruction, § 67-1501 et seq.

§ 67-1407. Fees assessed for services. — In conjunction with the attorney general, the division of financial management shall determine on or before November 1 of each year an amount to be billed to state entities for purposes of carrying out the provisions of this title. Such amount shall be paid by each state entity in the succeeding fiscal year to the indirect cost recovery fund. Before June 30 of each fiscal year, the state controller shall transfer an amount equal to such deposits to the state general fund.

History.

I.C., § 67-1407, as added by 2001, ch. 61, § 5, p. 112.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State controller, § 67-1001 et seq.

Prior Laws.

Former section 67-1407, which comprised I.C., § 67-1407, as added by 1995, ch. 141, § 3, p. 599, was repealed by S.L. 2001, ch. 61, § 4.

§ 67-1408. Billing of state entities for legal services. — The attorney general, in rendering assistance to the departments, agencies, offices, officers, boards, commissions, institutions and other state entities, shall charge for all costs of such assistance as determined pursuant to section 67-1407, Idaho Code, including, but not limited to, salaries of attorneys, paralegals, administrative, clerical and other personnel, investigative services, independent contractors, operating expenses and capital outlay expenses of the office of the attorney general. Whenever the attorney general determines that it would be beneficial to physically locate attorneys within an agency, the attorney general and agency may enter into an agreement defining which operating, capital or other expenses will be paid by the attorney general and which expenses will be paid by the agency.

The attorney general shall manage the attorney general's office to provide unified legal services based upon the legal needs of the state. For this purpose the attorney general may, during any fiscal year, assign personnel based upon the legal needs existing regardless of the source of funding therefor.

History.

I.C., § 67-1408, as added by 1995, ch. 141, § 4, p. 599; am. 2001, ch. 61, § 6, p. 112.

§ 67-1409. Contracts for legal services. — (1) The attorney general shall determine which legal services can most efficiently and effectively be provided by the attorney general's staff and which legal services can most efficiently and effectively be provided by contract. The attorney general shall develop application forms and requests for proposals utilizing generally accepted cost containment considerations, for those attorneys desiring to perform contract legal services for the state. Based upon the responses received, the attorney general shall recommend to the state board of examiners which attorneys or firms should be authorized to represent the state. The state board of examiners shall consider the recommendations made by the attorney general and shall determine which attorneys or firms so recommended are authorized to contract to provide legal services for the state, and the type or types of legal services they are authorized to provide. In determining which attorneys shall be authorized for particular types of services, the board of examiners shall select attorneys who, in the board's judgment can best provide quality legal services for the state entities at an acceptable cost. The determinations of the board of examiners shall not be subject to judicial review. Whenever the attorney general determines that an immediate appointment of a special deputy attorney general would be in the best interests of the state of Idaho, the attorney general may enter into an agreement with an attorney or firm to provide legal services for the state.

(2) The performance of all contracts for legal services shall be monitored and supervised by the attorney general or his designee, and any payments pursuant to such contracts must be approved by the attorney general. This provision shall not apply to contracts for legal services entered into by those entities exempted by [section 67-1406, Idaho Code](#).

History.

[I.C., § 67-1409](#), as added by 1995, ch. 141, § 5, p. 599; am. 2001, ch. 61, § 7, p. 112.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Compiler's Notes.

Section 6 of S.L. 1995, ch. 141 read: "1996 Fiscal Year Provisions. (1) For fiscal year 1996, the attorney general shall charge each state office, officers, department, agency, commission, board, institution or other state entity an amount equal to the amount such state entity paid in legal services during fiscal year 1995, other than contract legal services that were not provided by the attorney general. Provided, such amount shall be adjusted to reflect the change in employee compensation and benefits approved by the legislature, and the cost of computerized legal research. The attorney general shall be allowed to enter into agreements with state entities to provide legal services in addition to those provided during fiscal year 1995 and may bill state entities therefor.

"(2) The provisions of this section shall not apply to the legislative and judicial branches of the state of Idaho and the governor, and state entities within the department of self-governing agencies, colleges and universities."

Effective Dates.

Section 7 of S.L. 1995, ch. 141 provided that the act should be in full force effect on July 1, 1995 and that the provisions of Section 6 shall govern fiscal matters only during fiscal year 1996.

CASE NOTES

Responsibility of Attorney General.

Attorneys with whom the attorney general contracts to provide legal representation of state agencies are appointed as special deputy attorneys general, and the attorney general, thus, retains the ultimate responsibility for the legal representation of the agencies. *Kelso v. Lance*, 134 Idaho 373, 3 P.3d 51 (2000).

§ 67-1410. Internet crimes against children unit. — (1) There is hereby established in the office of the attorney general the internet crimes against children unit (ICAC) that shall have the authority and responsibilities as set forth in this section.

(2) The ICAC shall have the authority and responsibility to conduct a statewide program for the investigation and prosecution of violations of all applicable Idaho laws that involve or are directly related to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses.

(3) The ICAC shall be under the exclusive control of the attorney general.

(4) The attorney general may request and receive the assistance of, and may enter into written agreements with, any prosecutor or law enforcement agency as necessary to implement the duties and responsibilities assigned to the ICAC under this section. This will include contracting for the assistance of law enforcement personnel in the investigation of any violation of any applicable laws pertaining to child pornography and solicitation of minors for pornography, prostitution or sex-related offenses. The attorney general may renew, suspend or revoke any ICAC agreement with a law enforcement agency at any time.

(5) The attorney general shall have the authority to designate ICAC task force agents. ICAC task force agents shall be commissioned law enforcement officers employed by law enforcement agencies.

(a) The designation of an ICAC task force agent is not an act of employment by the office of the attorney general.

(b) ICAC task force agents serve solely at the discretion and will of the attorney general and designation as an ICAC task force agent is not a property right to which due process applies.

(6) Designated ICAC task force agents shall have general peace officer powers and the authority to arrest individuals throughout the state for the purpose of investigation of internet crimes committed against children.

(7) The office of the attorney general shall employ such attorneys, investigators and other personnel as necessary to carry out the responsibilities of the ICAC as set forth under this section.

(8) The attorney general shall have the authority to adopt rules necessary to implement the duties and responsibilities assigned to the ICAC under this section.

History.

I.C., § 67-1410, as added by 2013, ch. 245, § 2, p. 593.

STATUTORY NOTES

Compiler's Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

§ 67-1411. Internet crimes against children fund. — (1) There is hereby created in the state treasury the internet crimes against children fund.

(2) The fund shall consist of: (a) Funds as may be appropriated by the legislature; and (b) Grants, donations and moneys from other sources.

(3) The fund shall be administered by the office of the attorney general, and moneys in the fund shall be used to fund the internet crimes against children unit as established by [section 67-1410, Idaho Code](#). Moneys in the fund may be allowed to accumulate from year to year and interest earned on the investment of idle moneys in the fund shall be returned to the fund.

(4) Moneys from the fund shall be appropriated by the legislature to the office of the attorney general and such appropriated moneys shall be used for carrying out the provisions of this section and [section 67-1410, Idaho Code](#).

History.

[I.C., § 67-1411](#), as added by 2013, ch. 245, § 3, p. 593.

§ 67-1412. Definitions. — As used in sections 67-1412 through 67-1416, Idaho Code, the following definitions apply:

- (1) “Attorney general” means the Idaho office of the attorney general.
- (2) “Core components” means those elements of a 24/7 program that analysis demonstrates are most likely to account for positive program outcomes.
- (3) “Immediate sanction” means sanctions that are applied within minutes of a noncompliant test event.
- (4) “Jurisdiction” means the county or municipality that chooses to participate in a 24/7 program.
- (5) “Law enforcement agency” means the county sheriff’s office or another law enforcement agency designated by the county sheriff’s office that is charged with enforcement of a 24/7 program.
- (6) “24/7 sobriety and drug monitoring program” or “24/7 program” means the 24/7 sobriety and drug monitoring program established in [section 67-1413, Idaho Code](#), that authorizes a court or agency as a condition of bond, sentence, probation, parole or work permit to:
 - (a) Require an individual to abstain from alcohol or dangerous drugs for a period of time when that individual has been charged, pleads guilty, found guilty, convicted or received a withheld judgment for a crime in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime including, but not limited to, driving under the influence of alcohol or dangerous drugs; and
 - (b) Require the individual to be subject to testing for alcohol and/or dangerous drugs:
 - (i) At least twice a day at a central location where immediate sanctions can be applied;
 - (ii) Where twice a day testing is impractical, by continuous transdermal alcohol monitoring by means of an electronic monitoring device where timely sanctions can be applied; or

(iii) By an alternate method with concurrence of the attorney general and consistent with [section 67-1413, Idaho Code](#).

(7) “Testing” means a procedure for determining the presence and level of alcohol or a dangerous drug, as enumerated in chapter 80, title 18, Idaho Code, or as provided as a condition of probation, withheld judgment or parole, in an individual’s body fluid including blood, breath, urine, saliva or perspiration and includes any combination of the use of breath testing, drug patch testing, urinalysis testing, saliva testing or continuous or transdermal alcohol monitoring. With the concurrence of the attorney general and consistent with [section 67-1413, Idaho Code](#), alternate body fluids can be approved for use.

(8) “Timely sanction” means a sanction that is applied within a period of time that can be hours or days after the noncompliant test event, but the period of time should be as short as possible and not extend beyond fourteen (14) days.

History.

[I.C., § 67-1412](#), as added by 2014, ch. 240, § 4, p. 604; am. 2018, ch. 169, § 20, p. 344.

STATUTORY NOTES

Amendments.

The 2018 amendment, by ch. 169, substituted “section 67-1413” for “section 67-2920” in the introductory paragraph of subsection (6).

Legislative Intent.

Section 2 of S.L. 2014, ch. 240 provided: “Legislative Intent. The Legislature declares that driving in Idaho is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities. The Legislature further declares that the purpose of this act is to protect the public health and welfare by reducing the number of people on Idaho’s highways who drive under the influence of alcohol or dangerous drugs; to protect the public health and welfare by reducing the number of repeat offenders for certain offenses in which the abuse of alcohol or dangerous drugs was a contributing factor in the

commission of the crime; and to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders and offenders for certain crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.”

Compiler’s Notes.

Section 1 of S.L. 2014, ch. 240 provided: “Short Title. This act shall be known and may be cited as the ‘Idaho 24/7 Sobriety and Drug Monitoring Program Act.’”

§ 67-1413. Sobriety and drug monitoring program created. — (1) There is hereby created within the office of the attorney general the sobriety and drug monitoring program.

(2) The core components of the statewide 24/7 program shall include the utilization of a primary testing methodology that facilitates the ability to apply immediate sanctions for noncompliance at an affordable cost. In hardship cases or where a program participant is rewarded with less stringent testing requirements, testing methodologies with timely sanctions for noncompliance may be utilized.

(3) The statewide 24/7 program shall be evidence-based and shall be able to satisfy at least two (2) of the following categories: included in the federal registry of evidence-based programs and practices; reported with positive effects on the primary target outcome in peer review journals; or documented effectiveness supported by other sources of information and the judgment of informed experts.

(4) If a jurisdiction chooses to participate in the 24/7 sobriety and drug monitoring program, the attorney general shall assist in creation and administration of the 24/7 program in the jurisdiction in the manner provided in [sections 67-1412 through 67-1416, Idaho Code](#). The attorney general shall also assist jurisdictions in which a 24/7 program exists in determining alternatives to incarceration.

(5)(a) If a jurisdiction participates in the 24/7 program, the law enforcement agency may designate an entity to provide the testing services or take any other action required or authorized to be provided by the law enforcement agency pursuant to [sections 67-1412 through 67-1416, Idaho Code](#), except that the law enforcement agency's designee may not determine whether to participate in the 24/7 sobriety and drug monitoring program.

(b) The law enforcement agency shall establish the testing locations and times for the jurisdiction, but must have at least one (1) testing location and two (2) daily testing times approximately twelve (12) hours apart.

History.

I.C., § 67-1413, as added by 2014, ch. 240, § 4, p. 604.

STATUTORY NOTES

Legislative Intent.

Section 2 of S.L. 2014, ch. 240 provided: “Legislative Intent. The Legislature declares that driving in Idaho is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities. The Legislature further declares that the purpose of this act is to protect the public health and welfare by reducing the number of people on Idaho’s highways who drive under the influence of alcohol or dangerous drugs; to protect the public health and welfare by reducing the number of repeat offenders for certain offenses in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; and to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders and offenders for certain crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.”

Compiler’s Notes.

Section 1 of S.L. 2014, ch. 240 provided: “Short Title. This act shall be known and may be cited as the ‘Idaho 24/7 Sobriety and Drug Monitoring Program Act.’”

§ 67-1414. Rules — Testing fees. — The attorney general shall adopt rules to implement the provisions of sections 67-1412 through 67-1416, Idaho Code. The rules must:

(1) Provide the nature and manner of testing and the procedures and apparatus to be used for testing;

(2) Establish reasonable participant and testing fees for the program, including the collection of fees to pay the cost of installation, monitoring, calibration and deactivation of any testing device and reimbursement to private or governmental entities providing such services;

(3) Provide the establishment and use of local accounts for the deposit of fees collected and for administration of the 24/7 sobriety and drug monitoring program pursuant to these rules;

(4) Require approval by the attorney general of all contracts entered into between local or state agencies and vendors participating in the 24/7 sobriety and drug monitoring program; and

(5) Require and provide for the approval of a 24/7 sobriety and drug monitoring program data management technology plan that must be used by the attorney general and participating jurisdictions to manage testing, data access, fees and fee payments and any required reports.

History.

I.C., § 67-1414, as added by 2014, ch. 240, § 4, p. 604.

STATUTORY NOTES

Legislative Intent.

Section 2 of S.L. 2014, ch. 240 provided: “Legislative Intent. The Legislature declares that driving in Idaho is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities. The Legislature further declares that the purpose of this act is to protect the public health and welfare by reducing the number of people on Idaho’s highways who drive under the influence of

alcohol or dangerous drugs; to protect the public health and welfare by reducing the number of repeat offenders for certain offenses in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; and to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders and offenders for certain crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.”

Compiler’s Notes.

Section 1 of S.L. 2014, ch. 240 provided: “Short Title. This act shall be known and may be cited as the ‘Idaho 24/7 Sobriety and Drug Monitoring Program Act.’”

§ 67-1415. Authority of court and other entities to order participation in sobriety and drug monitoring program. — Any court, the commission for [of] pardons and parole, the department of juvenile corrections, the driver's license section of the transportation department, any county probation department, any juvenile probation department, the department of correction and the department of health and welfare dealing with child protection issues or a law enforcement entity dealing with domestic violence issues may avail itself of the 24/7 program for persons. Any entity utilizing the 24/7 program may condition any sanctions against an individual to be stayed as long as the individual participates in and/or successfully completes the 24/7 sobriety and drug monitoring program.

History.

I.C., § 67-1415, as added by 2014, ch. 240, § 4, p. 604.

STATUTORY NOTES

Cross References.

Department of juvenile corrections, § 20-503.

Department of correction, § 20-201.

Department of health and welfare, § 56-1001.

Legislative Intent.

Section 2 of S.L. 2014, ch. 240 provided: “Legislative Intent. The Legislature declares that driving in Idaho is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities. The Legislature further declares that the purpose of this act is to protect the public health and welfare by reducing the number of people on Idaho's highways who drive under the influence of alcohol or dangerous drugs; to protect the public health and welfare by reducing the number of repeat offenders for certain offenses in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; and to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders

and offenders for certain crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.”

Compiler’s Notes.

The bracketed insertion near the beginning of the section was added by the compiler to correct the name of the referenced agency. See § 20-210.

Section 1 of S.L. 2014, ch. 240 provided: “Short Title. This act shall be known and may be cited as the ‘Idaho 24/7 Sobriety and Drug Monitoring Program Act.’”

§ 67-1416. Collection, distribution and use of testing fees. — The law enforcement agency of a jurisdiction in which a 24/7 sobriety and drug monitoring program exists shall collect the testing fee required by the rules of the attorney general and deposit the fees into the local 24/7 program account established pursuant to rules of the attorney general. The fee must be distributed according to those rules to the proper jurisdiction for use by the law enforcement agency or the law enforcement agency's designee pursuant to the terms determined by the law enforcement agency in accordance with the provisions of sections 67-1412 through 67-1416, Idaho Code, and the rules implementing those sections.

History.

I.C., § 67-1416, as added by 2014, ch. 240, § 4, p. 604.

STATUTORY NOTES

Legislative Intent.

Section 2 of S.L. 2014, ch. 240 provided: “Legislative Intent. The Legislature declares that driving in Idaho is a privilege, not a right. A driver who wishes to enjoy the benefits of this privilege must accept the corresponding responsibilities. The Legislature further declares that the purpose of this act is to protect the public health and welfare by reducing the number of people on Idaho’s highways who drive under the influence of alcohol or dangerous drugs; to protect the public health and welfare by reducing the number of repeat offenders for certain offenses in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime; and to strengthen the pretrial and posttrial options available to prosecutors and judges in responding to repeat DUI offenders and offenders for certain crimes in which the abuse of alcohol or dangerous drugs was a contributing factor in the commission of the crime.”

Compiler’s Notes.

Section 1 of S.L. 2014, ch. 240 provided: “Short Title. This act shall be known and may be cited as the ‘Idaho 24/7 Sobriety and Drug Monitoring Program Act.’”

Chapter 15

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Sec.

67-1501. Election, qualifications, oath and bond.

67-1502. Office — Duties — Seal.

67-1503. Meetings with local superintendents.

67-1504. Superintendent as member of state board of education — Duties.

67-1505. Printing of supplies and laws. [Repealed.]

67-1506. Financial report on schools — Recommendations.

67-1507. Inspection of schools — Correspondence with other states.

67-1508. Expenses of state superintendent, how paid.

67-1509. Administrative rules.

§ 67-1501. Election, qualifications, oath and bond. — There shall be elected at the general election, 1974, and every four (4) years thereafter, by the qualified electors of the state, a state superintendent of public instruction, who shall reside at the seat of government, and shall perform such duties as are prescribed by the constitution and laws of the state. Before entering upon the duties of his office, the state superintendent of public instruction shall take and subscribe to the oath prescribed by the constitution. The state superintendent of public instruction shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code. Said oath shall be deposited with the secretary of state.

History.

1893, p. 187, § 6; reen. 1899, p. 85, § 6; compiled and reen. R.C., § 565; am. 1911, ch. 159, § 19, p. 489; am. 1913, ch. 115, § 2, p. 435; reen. C.L. 38:40; C.S., § 180; I.C.A., § 65-1401; am. 1971, ch. 136, § 44, p. 522; am. 1974, ch. 182, § 2, p. 1478; am. 1994, ch. 277, § 2, p. 864.

STATUTORY NOTES

Cross References.

Children's trust fund board, voting member, § 39-6001.

Election, § 34-613.

Ex officio member of state board of education, § 33-102.

Secretary of state, § 67-901 et seq.

Superintendent of public instruction an executive officer, term of office, Idaho [Const., Art. IV, § 1](#).

Effective Dates.

Section 3 of S.L. 1974, ch. 182 declared an emergency. Approved April 2, 1974.

Section 3 of S.L. 1994, ch. 277 declared an emergency. Approved March 31, 1994.

§ 67-1502. Office — Duties — Seal. — He shall have an office in Ada county, where a seal shall be kept which shall be the official seal of the state board of education by which all official acts may be authenticated, and all records, books and papers pertaining to the business of this office. He shall file all papers, reports and public documents transmitted to him by the county superintendents of the several counties, and hold the same in readiness to be exhibited to the governor, or to any committee of any house of the legislature, or to any citizen of the state.

History.

1893, p. 187, § 7; reen. 1899, p. 85, § 7; reen. R.C., § 566; am. 1911, ch. 159, § 20, p. 490; am. C.L. 38:41; C.S., § 181; I.C.A., § 65-1402; am. 2001, ch. 183, § 32, p. 613.

STATUTORY NOTES

Cross References.

Salary, § 59-501.

State board of education, § 33-101 et seq.

Term of office and residence, Idaho [Const., Art. IV, § 1](#).

§ 67-1503. Meetings with local superintendents. — He shall summon the county superintendents, or the city superintendents and district principals of graded schools, of each judicial district, or of two (2) or more districts combined, to meet jointly or separately at such time and place as he shall appoint, giving them due notice of such meeting. The object of such meetings shall be to discuss school organization, school supervision, and such other matters as may properly come before such meetings.

The term “district principal” means the head teacher of a graded school of four (4) or more teachers, but smaller than a class A independent district school, whether such school be maintained under article 3 or under article 4 of chapter 41 of Idaho Compiled Statutes.

History.

1893, p. 187, § 11; reen. 1899, p. 85, § 11; reen. R.C., § 570; am. 1911, ch. 159, § 21, p. 490; reen. C.L. 38:42; C.S., § 182; I.C.A., § 65-1403.

STATUTORY NOTES

Compiler’s Notes.

Articles 3 and 4 of ch. 41 of the Compiled Statutes (§§ 824-853) were repealed (except §§ 828, 853) by S.L. 1921, ch. 215, § 105. Sections 828 and 853 were also subsequently repealed.

§ 67-1504. Superintendent as member of state board of education — Duties. — He shall be an ex officio voting member of the state board of education. He shall enforce its rules and regulations concerning all elementary and secondary school matters under the control of the board and see that all matters requiring the decision of the board are promptly placed before it for decision. He shall faithfully execute the duties devolving upon him or delegated to him by said board concerning all elementary and secondary school matters under the control of the board except institutions of higher education.

History.

1911, ch. 159, § 22a, p. 490; compiled and reen. C.L. 38:43; C.S., § 183; I.C.A., § 65-1404; am. 1965, ch. 253, § 3, p. 637; am. 1974, ch. 10, § 16, p. 49.

STATUTORY NOTES

Cross References.

Member of state board of education, § 33-102.

§ 67-1505. Printing of supplies and laws. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1911, ch. 159, § 22b, p. 490; am. C.L. 38:44; C.S., § 184; I.C.A., § 65-1405; am. 1994, ch. 180, § 182, p. 420, was repealed by S.L. 2002, ch. 286, § 1.

§ 67-1506. Financial report on schools — Recommendations. — He shall, on or before the first day of December in every year preceding a regular session of the legislature, report to the governor and provide the state board with a copy thereof, on the condition of the public schools, the amount of the state school fund apportioned and sources from which derived, with such suggestions and recommendations relating to the affairs of his office as he may think proper.

History.

1911, ch. 159, § 22c, p. 491; reen. C.L. 38:45; C.S., § 185; I.C.A., § 65-1406; am. 1974, ch. 10, § 17, p. 49.

STATUTORY NOTES

Effective Dates.

Section 21 of S.L. 1974, ch. 10 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-1507. Inspection of schools — Correspondence with other states.

— It shall be his duty to visit annually such counties of the state as most need his personal attention, and all counties if practicable, for the purpose of inspecting the schools and awakening and guiding public sentiment in relation to the practical interests of education. He shall open such correspondence as may enable him to obtain all necessary information relating to the system of public education in other states.

History.

1911, ch. 159, § 22d, p. 491; reen. C.L. 38:46; C.S., § 186; I.C.A., § 65-1407.

§ 67-1508. Expenses of state superintendent, how paid. — All office, fuel, furniture, books, postage, stationery and other contingent expenses pertaining to his office, shall be furnished in the same manner as those of other departments of the state government.

History.

1911, ch. 159, § 22e, p. 491; reen. C.L. 38:47; C.S., § 187; I.C.A., § 65-1408.

§ 67-1509. Administrative rules. — All administrative rules promulgated by the superintendent of public instruction shall be subject to the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 67-1509, as added by 1992, ch. 263, § 58, p. 783.

Chapter 16

CAPITOL BUILDING AND GROUNDS

Sec.

67-1601. Statement of findings and purpose.

67-1602. Idaho state capitol — Allocation and control of space.

67-1603. Idaho state capitol — Exterior — Grounds — Systems.

67-1604. Idaho state capitol — Access and use.

67-1605. Law enforcement and security.

67-1606. Idaho state capitol commission — Creation and appointment of members.

67-1607. Organization of the commission.

67-1608. Powers and duties of the commission.

67-1609. Architect of the capitol building. [Repealed.]

67-1610. Capitol permanent endowment fund.

67-1610A. Capitol maintenance reserve fund.

67-1611. Capitol commission operating fund.

67-1612. Capitol tours program.

67-1613. Capitol mall and other state property and facilities — Camping prohibited.

67-1613A. Disposition of property.

67-1614 — 67-1629. [Repealed.]

§ 67-1601. Statement of findings and purpose. — (1) The legislature and governor of the state of Idaho find that:

(a) The Idaho state capitol building, hereafter referred to as the capitol building, located at the seat of government, in Boise City, Ada County, is a public monument representing the spirit of Idaho's citizens, a symbol of Idaho's sovereignty and one of Idaho's most renowned landmarks.

(b) The capitol building is also one of the most vital and preeminent public buildings in Idaho, wherein the legislative department and a majority of the elected executive department officers maintain their offices and perform their constitutionally prescribed duties.

(c) The maintenance and preservation of the capitol building and its grounds, including its historical character and architectural uniqueness, is of vital public interest and concern.

(d) The existing statutes do not fully and completely address the use, control, security, operation, maintenance, historical character and architectural uniqueness of the capitol building and its grounds.

(2) It is declared that the purposes of this chapter are:

(a) To establish a statute to comprehensively govern all aspects of the use, control, security, operation, and maintenance of the capitol building and its grounds.

(b) To ensure that the historical character and architectural integrity of the capitol building and its grounds be preserved and promoted.

(c) To promote cooperation between the public and private sectors to fund necessary enhancements to and the preservation of the capitol building and its grounds in all respects and particularly its historical character and architectural integrity.

History.

I.C., § 67-1601, as added by 1998, ch. 306, § 2, p. 1006.

STATUTORY NOTES

Prior Laws.

Former sections 67-1601 to 67-1606 which comprised I.C., § 67-1601 to 67-1606, as added by 1993, ch. 388, § 1 (effective January 2, 1995, per S.L. 1994, ch. 181, § 42), were repealed by § 43 of S.L. 1994, ch. 181, effective January 2, 1995.

§ 67-1602. Idaho state capitol — Allocation and control of space. —

The space within the interior of the capitol building shall be allocated and controlled as follows:

(1) Public space. The interior within the rotunda, the hallways on the first and second floors, the restrooms located adjacent thereto, the elevators, the stairways between the first, second, third and fourth floors (excepting the interior stairways between the third and fourth floors within the legislative chambers), shall be space within the capitol building open to the public (“public space”). Subject to this chapter, the director of the department of administration shall maintain all public space.

(2) Executive department. The governor shall determine the use and allocate the space within the second floor. The director of the department of administration shall maintain such space.

(3) Legislative department. The legislative department shall determine the use of the space on the first, third and fourth floors as well as the basement, which basement shall include the underground atrium wings. All space within the first, third and fourth floors and the basement shall be allocated by the presiding officers of the senate and house of representatives. The presiding officers shall maintain such space and provide equipment and furniture thereto, provided however, that the presiding officers may contract with the director of the department of administration to maintain such space and provide equipment and furniture thereto.

History.

I.C., § 67-1602, as added by 1998, ch. 306, § 2, p. 1006; am. 2007, ch. 157, § 3, p. 480.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Prior Laws.

Former § 67-1602 was repealed. See Prior Laws, § 67-1601.

Amendments.

The 2007 amendment, by ch. 157, in subsection (3), in the first and second sentence, inserted “first”; and in the first sentence, added “which basement shall include the underground atrium wings.”

Compiler’s Notes.

Section 1 of S.L. 2007, ch. 157 provided: “The Legislature finds that the authority to develop a Capitol Master Plan rests solely with the Idaho Capitol Commission pursuant to [Section 67-1608, Idaho Code](#). Further, the Capitol Master Plan approved by the Capitol Commission, which includes the restoration of the Capitol Building, construction of single-story atrium wing additions at the east and west ends of the Capitol Building of approximately 25,000 square feet each, and a reconfiguration of space in the Capitol Building and which provides for the allocation and control of the first floor of the Capitol Building to be by the legislative department, is hereby declared to be reasonable and necessary.”

Section 2 of S.L. 2007, ch. 157 provided: “The Legislature hereby approves and authorizes the use of funds for the modified Capitol Master Plan for the restoration and expansion of the Capitol Building that have already been provided through agreements and authorizations from the Idaho Capitol Commission, the Department of Administration and the Idaho State Building Authority pursuant to House Concurrent Resolution No. 47 adopted by the Second Regular Session of the Fifty-eighth Idaho Legislature in 2006. Such funds are hereby authorized for the restoration and refurbishment of the Capitol Building, the construction of single story atrium wing additions to the east and west ends of the Capitol Building, provisions to allow future connectivity between the Capitol Building atrium wings and other adjoining state facilities in the Capitol Mall and, if there are funds available after the completion of the project herein described, such funds are to be applied to the debt service fund to pay principal and interest on bonds, thereby reducing annual rent in that year.”

S.L. 2007, Chapter 157 became law without the signature of the governor.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of S.L. 2007, ch. 157 declared an emergency and provided that the act should become effective on and after passage and approval. Approved March 22, 2007.

§ 67-1603. Idaho state capitol — Exterior — Grounds — Systems. —

The director of the department of administration shall have exclusive control of the exterior, grounds and systems of the capitol building. The director, in consultation with the governor, the presiding officers of the legislature and the commission created by this chapter, shall have exclusive authority to equip, maintain, and operate such exterior, grounds and systems. For the purposes of this section, “systems” means electrical, HVAC (heating, ventilating, air-conditioning) and telecommunication systems used in the capitol building.

History.

I.C., § 67-1603, as added by 1998, ch. 306, § 2, p. 1006.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Idaho state capitol commission, § 67-1606.

Prior Laws.

Former § 67-1603 was repealed. See Prior Laws, § 67-1601.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-1604. Idaho state capitol — Access and use. — The director of the department of administration may promulgate rules, pursuant to chapter 52, title 67, Idaho Code, governing access to and use by the public of the capitol building and its grounds. In determining whether to promulgate rules and in the promulgation of any rules, the director shall consult with the governor, the presiding officers of the senate and house of representatives and the commission created by this chapter.

History.

I.C., § 67-1604, as added by 1998, ch. 306, § 2, p. 1006.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Idaho state capitol commission, § 67-1606.

Prior Laws.

Former § 67-1604 was repealed. See Prior Laws, § 67-1601.

§ 67-1605. Law enforcement and security. — Responsibility for law enforcement at the capitol building and the supreme court building is vested in the director of the Idaho state police. In coordination with the director of the Idaho state police, Ada County and Boise City are granted jurisdiction to enforce the laws of the state of Idaho and the ordinances of Ada County and Boise City for the capitol building and the supreme court building. The director of the department of administration, or his designee, shall be responsible for security in the capitol building and the supreme court building and has the authority to contract with private contractors to provide security for persons and property in the capitol building and the supreme court building.

History.

I.C., § 67-1605, as added by 1998, ch. 306, § 2, p. 1006; am. 2000, ch. 469, § 133, p. 1450; am. 2008, ch. 85, § 1, p. 222.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Director of Idaho state police, § 67-2901.

Prior Laws.

Former § 67-1605 was repealed. See Prior Laws, § 67-1601.

Amendments.

The 2008 amendment, by ch. 85, added “and the supreme court building” following “capitol building” throughout the section.

§ 67-1606. Idaho state capitol commission — Creation and appointment of members. — (1) There is hereby created within the department of administration the Idaho state capitol commission, hereafter referred to as the commission. The commission shall consist of nine (9) members, six (6) of whom shall be public members. The public members shall be appointed as follows: four (4) members shall be appointed by the governor, one (1) member shall be appointed by the president pro tempore of the senate and one (1) member shall be appointed by the speaker of the house of representatives. Public members shall serve at the pleasure of the appointing authority, or for a term of five (5) years, whichever is shorter. The terms of initial public members shall expire as designated by the governor at the time of appointment: One (1) at the end of one (1) year; one (1) at the end of two (2) years; one (1) at the end of three (3) years; one (1) at the end of four (4) years; and two (2) at the end of five (5) years. A vacancy during the term of a public member shall be filled by the appointing authority for that member. The chairman of the commission shall be appointed by the governor from among the public members of the commission.

(2) The additional three (3) commission members shall be the director of the department of administration, the director of the Idaho state historical society, and the director of the office of legislative services, who shall serve as ex officio, voting members of the commission during their respective terms of office. The director of the department of administration shall serve as secretary of the commission.

(3) The governor, the president pro tempore of the senate and the speaker of the house may, at their discretion, serve as ex officio, nonvoting members of the commission.

History.

I.C., § 67-1606, as added by 1998, ch. 306, § 2, p. 1006.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Director of Idaho state historical society, § 67-4127.

Director of office of legislative services, § 67-701 et seq.

Prior Laws.

Former § 67-1606 was repealed. See Prior Laws, § 67-1601.

§ 67-1607. Organization of the commission. — The commission shall meet not less than two (2) times per year. A majority of the membership of the commission constitutes a quorum to transact business. Public members of the commission shall be reimbursed for actual and necessary expenses as provided in section 59-509(c), Idaho Code. Public members are entitled to reimbursement for reasonable travel expenses incurred in the performance of their duties as a member as provided by law.

History.

I.C., § 67-1607, as added by 1998, ch. 306, § 2, p. 1006; am. 2011, ch. 12, § 1, p. 38.

STATUTORY NOTES

Prior Laws.

Former sections 67-1607 to 67-1629 which comprised S.L. 1919, ch. 128, § 12, p. 422; C.S. § 378; S.L. 1923, ch. 192, § 1, p. 308; I.C.A., 65-1513, 65-1516; am. 1939, ch. 6, § 1, p. 20; 1939, ch. 71, § 1, p. 123; 1939, ch. 143, §§ 7-19, 21, 22, p. 255; am. 1941, ch. 81, § 1, p. 151; 1943, ch. 49, §§ 1, 2, p. 95; 1945, ch. 161, § 1, p. 240; am. 1949, ch. 138, § 1, p. 243; am. 1961, ch. 24, § 1, p. 31; am. 1965, ch. 304, § 3, p. 805; 1970, ch. 197, § 1, p. 571; am. 1971, ch. 136, § 45, 46, p. 522; am. 1972, ch. 232, § 1, p. 613; I.C., 67-1628, 67-1629, as added by S.L. 1972, ch. 372, §§ 1, 2, p. 1092 were repealed by S.L. 1974, ch. 34, § 1. For present law see, § 67-9201 et seq.

Amendments.

The 2011 amendment, by ch. 12, substituted “two (2) times per year” for “four (4) times per year” in the first sentence and substituted “59-509(c), Idaho Code” for “59-909(c), Idaho Code” in the second sentence.

§ 67-1608. Powers and duties of the commission. — The commission shall have the following powers and duties:

(1) In consultation with the director of the department of administration, periodically review the capitol building master plan and, as appropriate, amend and modify the plan: (a) In cooperation with the department of administration, who shall provide administrative support to the commission, prepare, approve and submit each year to the division of financial management and the legislative services office a budget reflecting all proposed expenditures for the commission for the ensuing fiscal year.

(b) The budget provided for in subsection (1)(a) of this section may include, but shall not necessarily be limited to, recommendations for transfers of money made pursuant to [section 67-1610\(2\), Idaho Code](#), from the capitol permanent endowment fund to the capitol endowment income fund [capitol maintenance reserve fund].

(2) To review all proposals to reconstruct, remodel or restore space within the capitol building. All such projects shall be approved by the commission and be in conformance with the capitol building master plan.

(3) To review all proposals involving objects of art, memorials, statues, or exhibits to be placed on a permanent or temporary basis in public space within the capitol building or on its grounds. All such proposals shall be in conformance with the approved written policies of the commission and implemented with the consent of the commission and consent of the legislature and governor pursuant to subsections (2) and (3) of [section 67-1602, Idaho Code](#).

(4) Work cooperatively with the Idaho state historical society to support a capitol curator to preserve, manage and protect the capitol building, and its historic collections and exhibits. The possession of all historic, restored and new furniture used by the executive department shall be retained by the executive department, and the possession of all historic, restored and new furniture used by the legislative department shall be retained by the presiding officers of the senate and house of representatives. All historic,

restored and new furniture shall be inventoried annually, shall remain in the capitol building and is the property of the state of Idaho.

(5) For the purpose of promoting interest in the capitol building and obtaining funds to enhance the preservation of original and historic elements of the capitol building and its grounds, to develop and implement a plan for the publishing and sale of publications on the history of the capitol building and to develop other capitol building memorabilia for sale to the public.

(6) To solicit gifts, grants or donations of any kind from any private or public source to carry out the purposes of this chapter. All gifts, grants or donations received directly by the commission shall be transmitted to the state treasurer who shall credit the same to the capitol [permanent] endowment fund created by this chapter.

(7) To request necessary assistance from all state agencies and the presiding officers of the senate and house of representatives in performing its duties pursuant to this chapter.

(8) To enter into agreements with tax-exempt nonprofit organizations for the purpose of assisting the commission in the performance of its duties under this chapter, including agreements for the establishment and maintenance of community foundation funds dedicated to the purposes of this chapter.

History.

I.C., § 67-1608, as added by 1998, ch. 306, § 2, p. 1006; am. 2007, ch. 41, § 3, p. 101; am. 2011, ch. 12, § 2, p. 38.

STATUTORY NOTES

Cross References.

Capitol permanent endowment fund, § 67-1610.

Department of administration, § 67-5701 et seq.

Division of financial management, § 67-1910.

Idaho state historical society, § 67-4111 et seq.

Legislative services office, § 67-701 et seq.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-1608 was repealed. See Prior Laws, § 67-1607.

Amendments.

The 2007 amendment, by ch. 41, substituted “or, during renovation of the capitol building, in temporary space approved by the commission” for “at all times” in the last sentence in subsection (5).

The 2011 amendment, by ch. 12, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler’s Notes.

The bracketed insertions in paragraph (1)(b) and subsection (6) were added by the compiler to reflect the current names of the appropriate funds. See §§ 67-1610A and 67-1610.

Effective Dates.

Section 4 of S.L. 2007, ch. 41 declared an emergency. Approved March 2, 2007.

Idaho Code § 67-1609

§ 67-1609. Architect of the capitol building. [Repealed.]

Repealed by S.L. 2011, ch. 12, § 3, effective July 1, 2011.

History.

I.C., § 67-1609, as added by 1998, ch. 306, § 2, p. 1006.

STATUTORY NOTES

Prior Laws.

Former § 67-1609 was repealed. See Prior Laws, § 67-1607.

§ 67-1610. Capitol permanent endowment fund. — (1) There is hereby created a permanent fund within the state treasury to be known as the capitol permanent endowment fund, consisting of, from this point forward: (a) the proceeds of the sale of lands granted to the state of Idaho for the purpose of facilitating the construction, repair, furnishing and improvement of public buildings at its capitol by an Act of Congress (26 Stat. L. 214, ch. 656 (1890) (as amended)) entitled “An Act to Provide for the Admission of the State of Idaho into the Union,” comprising thirty-two thousand (32,000) acres, or any portion thereof, or mineral therein; (b) earnings of the capitol permanent endowment fund; (c) proceeds of the sale of timber growing upon capitol endowment lands; (d) proceeds of leases of capitol buildings endowment lands; (e) proceeds of interest charged upon deferred payments on capitol buildings endowment lands or timber on those lands; (f) all unappropriated and unencumbered moneys in the public building fund shown on the state controller’s chart of accounts as the capitol permanent endowment fund; (g) retained earnings to compensate for the effects of inflation; and (h) legislative appropriations. The fund shall be managed by the endowment fund investment board in accordance with chapter 5, title 68, Idaho Code.

(2) On July 1 of each fiscal year, the endowment fund investment board shall distribute to the capitol maintenance reserve fund created in [section 67-1610A, Idaho Code](#), an amount equal to a percentage approved by the board of the value of the capitol permanent endowment fund that is calculated to provide a stable source of moneys to allow for the maintenance, repair and restoration of the capitol, and to provide for administrative costs incurred managing the assets of the capitol permanent endowment, while still preserving and increasing over time the value of the capitol permanent endowment fund.

History.

[I.C., § 67-1610](#), as added by 1998, ch. 306, § 2, p. 1006; am. 2003, ch. 32, § 43, p. 115; am. 2004, ch. 25, § 1, p. 41; am. 2013, ch. 111, § 1, p. 266.

STATUTORY NOTES

Cross References.

Endowment fund investment board, § 57-718.

State controller, § 67-1001 et seq.

Prior Laws.

Former § 67-1610 was repealed. See Prior Laws, § 67-1607.

Amendments.

The 2013 amendment, by ch. 111, in subsection (2), substituted “capitol maintenance reserve fund created in section 67-1610A” for “capitol endowment income fund created in section 67-1611” near the beginning and inserted “and to provide for administrative costs incurred managing the assets of the capitol permanent endowment” near the end.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 2004, ch. 25 provided: “This act shall be in full force and effect on and after July 1, 2004, and all earnings and revenues realized or received after July 1, 2004, shall be distributed in accordance with this act, regardless of when those earnings and revenues were earned or accrued.”

OPINIONS OF ATTORNEY GENERAL**Sale of Lands.**

When compared with the language of the other endowment statutes, this section does not permit the deposit of proceeds from the sale of the lands comprising the capitol permanent endowment into the land bank. OAG 01-4.

§ 67-1610A. Capitol maintenance reserve fund. — (1) There is hereby created a permanent fund within the state treasury to be known as the capitol maintenance reserve fund.

(2) The fund shall receive distributions from the capitol permanent endowment fund, as provided in [section 67-1610, Idaho Code](#), and shall be managed by the endowment fund investment board in accordance with the provisions of chapter 5, title 68, Idaho Code.

(3) Except as provided for in subsection (4) of this section, all moneys in the capitol maintenance reserve fund shall be used exclusively by the capitol commission to address repair, maintenance and construction needs approved by the commission to benefit the capitol building and its grounds; provided that moneys from the fund shall also be used to pay for administrative costs incurred managing the assets of the capitol permanent endowment including, but not limited to, real property and monetary assets. All expenditures from the capitol maintenance reserve fund shall be subject to appropriation by the legislature.

(4) Upon request of the capitol commission, the endowment fund investment board shall distribute from the capitol maintenance reserve fund to the capitol commission operating fund created in [section 67-1611, Idaho Code](#), an amount determined by the capitol commission to be sufficient to cover the operation, activities and projects of the capitol commission.

History.

[I.C., § 67-1610A](#), as added by 2013, ch. 111, § 2, p. 266.

STATUTORY NOTES

Cross References.

Endowment fund investment board, § 57-718.

§ 67-1611. Capitol commission operating fund. — (1) There is hereby created in the state treasury the capitol commission operating fund. The fund shall be used to support the operation, activities and projects of the capitol commission, shall be managed by the state treasurer and shall consist of the following:

(a) Transfers approved by the capitol commission from the capitol maintenance reserve fund for the operation, activities and projects of the capitol commission; (b) All interests earned on the capitol commission operating fund; and (c) All other proceeds either public or private approved by the legislature for the purposes of this act.

(2) All moneys in the capitol commission operating fund shall be subject to annual appropriation by the legislature. All moneys shall be appropriated exclusively for the purposes of this chapter, retained for future appropriation, or transferred to the capitol endowment permanent fund [capital permanent endowment fund] by legislative appropriation.

History.

I.C., § 67-1611, as added by 1998, ch. 306, § 2, p. 1006; am. 2004, ch. 25, § 2, p. 41; am. 2013, ch. 111, § 3, p. 266.

STATUTORY NOTES

Cross References.

Capitol maintenance reserve fund, § 67-1610A.

Idaho state capitol commission, § 67-1606.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-1611 was repealed. See Prior Laws, § 67-1607.

Amendments.

The 2013 amendment, by ch. 111, changed the name of the fund, formerly the capitol endowment income fund and rewrote the section to the

extent that a detailed comparison is impracticable.

Compiler's Notes.

The term "this act" at the end of paragraph (1)(c) refers to S.L. 2013, Chapter 111, which is codified as §§ 49-420A and 67-1610 to 67-1611. Probably the reference should be to "this chapter," being chapter 16, title 67, Idaho Code.

The bracketed insertion in subsection (2) was added by the compiler to correct the name of the referenced fund. See § 67-1610.

Effective Dates.

Section 3 of S.L. 2004, ch. 25 provided: "This act shall be in full force and effect on and after July 1, 2004, and all earnings and revenues realized or received after July 1, 2004, shall be distributed in accordance with this act, regardless of when those earnings and revenues were earned or accrued."

§ 67-1612. Capitol tours program. — There is hereby established a capitol tours program which shall exist to provide a visitor oriented program of historical interpretation and education concerning the Idaho state capitol building and grounds. It is the purpose of this program to assure access and understanding of the capitol building to further the purposes delineated in this chapter. This tours program will take advantage of the efforts to preserve and maintain the capitol building, and open the people's building to the people.

History.

I.C., § 67-1612, as added by 1998, ch. 306, § 2, p. 1006.

STATUTORY NOTES

Prior Laws.

Former § 67-1612 was repealed. See Prior Laws, § 67-1607.

§ 67-1613. Capitol mall and other state property and facilities — Camping prohibited. — No person shall camp on or in any state-owned or leased property or facility including, but not limited to, the capitol mall, except those that are designated as a recreational camping ground, area or facility. The provisions of this section shall not apply or affect policies, rules, statutes or leases on endowment lands, department of parks and recreation lands or department of fish and game lands. For the purposes of this section, the term “camp” or “camping” means to use as a temporary or permanent place of dwelling, lodging or living accommodation, and which indicia of camping may include, but are not limited to, storing personal belongings, using tents or other temporary structures for storing personal belongings or for sleeping, carrying on cooking activities, laying out bedding or making any fire. Any person who violates the provisions of this section shall be guilty of an infraction. Such persons shall be required to remove all their personal property from the state-owned or leased property.

History.

I.C., § 67-1613, as added by 2012, ch. 17, § 2, p. 36.

STATUTORY NOTES

Cross References.

Department of parks and recreation lands, § 67-4224.

Punishment for infraction, § 18-113A.

Prior Laws.

Former § 67-1613 was repealed by S.L. 1974, ch. 34, § 1.

Legislative Intent.

Section 1 of S.L. 2012, ch. 17 provided: “Legislative Intent. Whereas, the Capitol Building and the Capitol Mall, as well as other state-owned and leased grounds and facilities, function as the vibrant core of Idaho State Government for Idaho citizens and, as such, require unobstructed grounds and convenient access to ensure the health and safety of all citizens

including touring visitors and school children; and, whereas, the state should always strive to maintain the highest aesthetic standards for the grounds of the Capitol Mall, as well as other state-owned and leased grounds and facilities; and, whereas, the Capitol Mall and other state-owned and leased grounds and facilities should have consistent public use guidelines where appropriate with the local government; the Legislature now finds that it is in the best interest of the public health and safety of Idaho citizens to regulate the use of the grounds of the Capitol Mall and other state-owned and leased grounds and facilities in order to prevent the unauthorized use of these grounds and facilities as a temporary or permanent place for camping, lodging or living accommodations.”

Compiler’s Notes.

Section 4 of S.L. 2012, ch. 17 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 5 of S.L. 2012, ch. 17 declared an emergency. Approved February 21, 2012.

§ 67-1613A. Disposition of property. — Any property remaining after issuance of a citation or any property left unattended shall be held by the agency or its agent removing the property in a secure location for a period of not less than ninety (90) days. Notice shall be posted and remain at the nearest reasonable location to the place of removal with the agency's or agent's contact information for the ninety (90) day period. If property is not claimed within the ninety (90) day period, the property shall be deemed abandoned and the agency shall have the right to dispose of the property. A reasonable storage fee as determined by the agency may be assessed at the time an owner claims the property. The individual claiming the property shall produce identification and shall sign a release form providing his or her name and contact information and swearing that the property belongs to the claiming party. If the provisions of this section are complied with, the state of Idaho, its agents, employees and contractors shall be immune from legal liability for the administration of this section.

History.

I.C., § 67-1613A, as added by 2012, ch. 17, § 3, p. 36.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 17 provided: “Legislative Intent. Whereas, the Capitol Building and the Capitol Mall, as well as other state-owned and leased grounds and facilities, function as the vibrant core of Idaho State Government for Idaho citizens and, as such, require unobstructed grounds and convenient access to ensure the health and safety of all citizens including touring visitors and school children; and, whereas, the state should always strive to maintain the highest aesthetic standards for the grounds of the Capitol Mall, as well as other state-owned and leased grounds and facilities; and, whereas, the Capitol Mall and other state-owned and leased grounds and facilities should have consistent public use guidelines where appropriate with the local government; the Legislature now finds that it is in the best interest of the public health and safety of Idaho citizens to regulate the use of the grounds of the Capitol Mall and

other state-owned and leased grounds and facilities in order to prevent the unauthorized use of these grounds and facilities as a temporary or permanent place for camping, lodging or living accommodations.”

Compiler’s Notes.

Section 4 of S.L. 2012, ch. 17 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 5 of S.L. 2012, ch. 17 declared an emergency. Approved February 21, 2012.

§ 67-1614 — 67-1629. State purchasing agent — Contracts — Prohibitions — Revolving fund for purchase of supplies — Contracts with federal government — Stocks of supplies — Discounts — Car pool system. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

Former sections 67-1607 to 67-1629 which comprised S.L. 1919, ch. 128, § 12, p. 422; C.S. § 378; S.L. 1923, ch. 192, § 1, p. 308; I.C.A., 65-1513, 65-1516; am. 1939, ch. 6, § 1, p. 20; 1939, ch. 71, § 1, p. 123; 1939, ch. 143, §§ 7-19, 21, 22, p. 255; am. 1941, ch. 81, § 1, p. 151; 1943, ch. 49, §§ 1, 2, p. 95; 1945, ch. 161, § 1, p. 240; am. 1949, ch. 138, § 1, p. 243; am. 1961, ch. 24, § 1, p. 31; am. 1965, ch. 304, § 3, p. 805; 1970, ch. 197, § 1, p. 571; am. 1971, ch. 136, § 45, 46, p. 522; am. 1972, ch. 232, § 1, p. 613; **I.C., 67-1628, 67-1629**, as added by S.L. 1972, ch. 372, §§ 1, 2, p. 1092 were repealed by S.L. 1974, ch. 34, § 1. For present comparable law, see § 67-9201 et seq.

Chapter 17

COMMISSIONERS ON UNIFORM LAWS

Sec.

67-1701. Appointment of commissioners — Qualifications — Vacancies.

67-1702. Term of office — Disbursements for expenses.

67-1703. Meeting and organization.

67-1704. Duties of commissioners.

§ 67-1701. Appointment of commissioners — Qualifications — Vacancies. — The governor shall appoint four (4) commissioners, each of whom shall be a member of the bar of this state, in good standing, who shall constitute and be known as the commission on uniform state laws, and upon the death, resignation or refusal to serve of any of the commissioners so appointed, the governor shall make an appointment to fill the vacancy so caused, such new appointment to be for the unexpired balance of the term of the original appointee. The commission shall be within the office of the secretary of state.

History.

1919, ch. 163, § 1, p. 530; C.S., § 226; I.C.A., § 65-1601; am. 1974, ch. 5, § 6, p. 23; am. 2000, ch. 138, § 1, p. 364.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Compiler's Notes.

Section 5 of S.L. 1970, ch. 110 purported to repeal §§ 67-1701 to 67-1704 of the Idaho Code, however such repeal was probably a typographical error and ineffective as not agreeing with the title of the act which stated it was “repealing sections 67-2702 through and including 67-2704, Idaho Code, relating to the bureau of public accounts.”

This act is substantially in the form recommended by the National Conference of Commissioners on Uniform State Laws.

Effective Dates.

Section 9 of S.L. 1974, ch. 5 provided that the act would be in full force and effect on and after July 1, 1974.

Section 3 of S.L. 2000, ch. 138 declared an emergency. Approved April 3, 2000.

§ 67-1702. Term of office — Disbursements for expenses. — Each of said commissioners shall hold office for a term of four (4) years, and until his successor is duly appointed, but nothing herein contained shall be construed to render a commissioner who has faithfully performed his duties ineligible for reappointment. No member of said commission shall receive any compensation for his services as commissioner, but each commissioner shall be entitled to receive his actual disbursements for expenses in performing the duties of his office.

History.

1919, ch. 163, § 2, p. 530; I.C.A., § 65-1602.

STATUTORY NOTES

Compiler's Notes.

The term “herein” in the first sentence refers to S.L. 1919, Chapter 163, which is codified as §§ 67-1701 to 67-1704.

§ 67-1703. Meeting and organization. — The commissioners shall meet in Ada county at least once in two (2) years and shall organize by the election of one (1) of their number as chairman and another as secretary, who shall hold their respective offices for a term of two (2) years and until their successors are elected and qualified.

History.

1919, ch. 163, § 3, p. 530; C.S., § 228; I.C.A., § 65-1603; am. 2001, ch. 183, § 33, p. 613.

§ 67-1704. Duties of commissioners. — It shall be the duty of each of said commissioners to attend the meeting of the national conference of the uniform law commission, or to arrange for the attendance of at least one of their number at such national conference, and both in and out of such national conference they shall do all in their power to promote uniformity in state laws, upon all subjects where uniformity may be deemed desirable and practicable. Said commission shall report to the legislature at its next session, and from time to time thereafter as said commission may deem proper, an account of its transactions, and its advice and recommendations for legislation. This report shall be printed for presentation to each legislature. It shall also be the duty of said commission to bring about as far as practicable the uniform judicial interpretation of all uniform laws, and generally, to devise and recommend such additional legislation, or other or further course of action, as shall tend to accomplish the purposes of this act.

History.

1919, ch. 163, § 4, p. 530; C.S., § 229; I.C.A., § 65-1604; am. 2015, ch. 244, § 47, p. 1008.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 244, substituted “the uniform law commission” for “commissioners on uniform state laws” in the first sentence.

Compiler’s Notes.

For more on the uniform law commission, see <https://uniformlaws.org>.

The term “this act” at the end of the section refers to S.L. 1919, Chapter 163, which is compiled as §§ 67-1701 to 67-1704.

Chapter 18

IDAHO MILLENNIUM FUND

Sec.

67-1801. Idaho millennium permanent endowment fund.

67-1802. Distribution from the Idaho millennium permanent endowment fund.

67-1803. Idaho millennium fund.

67-1804. Distribution from the Idaho millennium fund.

67-1805. Idaho millennium fund balance limitation.

67-1806. Idaho millennium income fund.

67-1807. Joint millennium fund committee — Creation and appointment of members.

67-1808. Powers and duties of the committee.

67-1809. Support and staff for the committee.

§ 67-1801. Idaho millennium permanent endowment fund. — (1) There is hereby created in the state treasury the “Idaho Millennium Permanent Endowment Fund.” The fund shall consist of eighty percent (80%) of the moneys received by the state of Idaho on and after January 1, 2007, pursuant to the master settlement agreement entered into between tobacco product manufacturers and the state of Idaho, and such moneys as may be provided by legislative appropriations or otherwise directed to the fund by the legislature, including other moneys or assets that the fund receives by bequest or donation.

(2) The moneys received annually for deposit to the fund, including earnings, shall forever remain inviolate and intact. No portion of the fund shall ever be transferred to any other fund, or used, or appropriated, except as allowed by the provisions of [section 18, article VII of the constitution](#) of the state of Idaho and as directed by the provisions of [section 67-1802, Idaho Code](#).

(3) Fund assets shall be invested by the state treasurer according to the standards of the Idaho uniform prudent investor act, chapter 5, title 68, Idaho Code, and the state treasurer is hereby granted authority to invest the assets of the fund in any investment instruments authorized by the standards of the Idaho uniform prudent investor act.

History.

[I.C., § 67-1801](#), as added by 2006, ch. 187, § 1, p. 588.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Compiler’s Notes.

Former § 67-1801 was amended and redesignated as § 67-1803, pursuant to S.L. 2006, ch. 187, § 3.

Effective Dates.

Section 3 of S.L. 2000, ch. 1 declared an emergency. Approved February 14, 2000.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: “Section 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

“Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

§ 67-1802. Distribution from the Idaho millennium permanent endowment fund. — On the first business day of July, or as soon thereafter as possible, the state treasurer shall distribute to the Idaho millennium income fund five percent (5%) of the Idaho millennium permanent endowment fund's average monthly fair market value of the first twelve (12) months of the preceding twenty-four (24) months. Provided however, the distribution shall not exceed the Idaho millennium permanent endowment fund's fair market value on the first business day in July.

History.

I.C., § 67-1802, as added by 2006, ch. 187, § 2, p. 588.

STATUTORY NOTES

Cross References.

Idaho millennium income fund, § 67-1806.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

Former § 67-1802 was amended and redesignated as § 67-1806, pursuant to S.L. 2006, ch. 187, § 6.

Effective Dates.

Section 5 of S.L. 2002, ch. 352, provides: "This act shall be in full force and effect on and after July 1, 2002, provided that the initial appointments authorized in Section 2 of this act may be made prior to the effective date of this act."

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "Section 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

"Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer

shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

§ 67-1803. Idaho millennium fund. — There is hereby created in the state treasury the “Idaho Millennium Fund.” The fund shall consist of twenty percent (20%) of the moneys received by the state of Idaho on and after January 1, 2007, pursuant to the master settlement agreement entered into between tobacco product manufacturers and various states, including Idaho, and such moneys as may be provided by legislative appropriations or otherwise directed to the fund by the legislature including other moneys or assets that the fund receives by bequest or donation. Money in the fund is not subject to appropriation or distribution, except as provided in section 67-1804, Idaho Code. Fund assets shall be invested by the state treasurer according to the standards of the Idaho uniform prudent investor act, chapter 5, title 68, Idaho Code, and the state treasurer is hereby granted the authority to invest the assets of the Idaho millennium fund in any investment instruments authorized by the standards of the Idaho uniform prudent investor act.

History.

I.C., § 67-1801, as added by 2000, ch. 1, § 1, p. 3; am. and redesign. 2006, ch. 187, § 3, p. 588.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Amendments.

The 2006 amendment, by ch. 187, renumbered the section from § 67-1801; and, in the first sentence, substituted “twenty percent (20%) of the moneys received by the state of Idaho on and after January 1, 2007” for “distributed to the state” and added “or otherwise directed to the fund by the legislature including other moneys or assets that the fund receives by bequest or donation” to the end; and, in the second sentence, substituted “67-1804” for “67-1802 and 67-1803.”

Compiler’s Notes.

Former § 67-1803 was amended and redesignated as § 67-1804, pursuant to S.L. 2006, ch. 187, § 4.

Effective Dates.

Section 2 of S.L. 2003, ch. 1, declared an emergency. Approved February 4, 2003.

Sections 10 and 11 of S.L. 2006, ch. 187 provide: “Section 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

“Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

§ 67-1804. Distribution from the Idaho millennium fund. — On the first business day of July, or as soon thereafter as possible, the state treasurer shall distribute to the Idaho millennium income fund five percent (5%) of the Idaho millennium fund's average monthly fair market value for the first twelve (12) months of the preceding twenty-four (24) months. Provided however, that the distribution shall not exceed the Idaho millennium fund's fair market value on the first business day in July.

History.

I.C., § 67-1803, as added by 2000, ch. 1, § 1, p. 3; am. 2003, ch. 1, § 1, p. 3; am. and redesign. 2006, ch. 187, § 4, p. 588.

STATUTORY NOTES

Cross References.

Idaho millennium income fund, § 67-1806.

State treasurer, § 67-1201 et seq.

Amendments.

The 2006 amendment, by ch. 187, renumbered the section from § 67-1803 and rewrote the section heading, which formerly read: "Distribution of funds."

Compiler's Notes.

Former § 67-1804 was amended and redesignated as § 67-1807, pursuant to S.L. 2006, ch. 187, § 7.

Effective Dates.

Section 5 of S.L. 2002, ch. 352, provides: "This act shall be in full force and effect on and after July 1, 2002, provided that the initial appointments authorized in Section 2 of this act may be made prior to the effective date of this act."

Sections 10 and 11 of S.L. 2006, ch. 187 provide: "Section 10. This act shall be in full force and effect on and after the date of adoption of Senate

Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

“Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

§ 67-1805. Idaho millennium fund balance limitation. — The balance of the Idaho millennium fund shall not exceed one hundred million dollars (\$100,000,000) as determined on the day following the distribution to the Idaho millennium income fund as required by the provisions of section 67-1804, Idaho Code. Any amount in excess of the one hundred million dollar (\$100,000,000) limit shall be transferred by the state treasurer to the Idaho millennium permanent endowment fund created in section 67-1801, Idaho Code.

History.

I.C., § 67-1805, as added by 2006, ch. 187, § 5, p. 588.

STATUTORY NOTES

Cross References.

Idaho millennium income fund, § 67-1806.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

Former § 67-1805 was amended and redesignated as § 67-1808, pursuant to S.L. 2006, ch. 187, § 8.

Effective Dates.

Section 5 of S.L. 2002, ch. 352, provides: “This act shall be in full force and effect on and after July 1, 2002, provided that the initial appointments authorized in Section 2 of this act may be made prior to the effective date of this act.”

Sections 10 and 11 of S.L. 2006, ch. 187 provide: “Section 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

“Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer

shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

§ 67-1806. Idaho millennium income fund. — There is hereby created in the state treasury the “Idaho Millennium Income Fund.” The fund shall consist of distributions from the Idaho millennium permanent endowment fund, the Idaho millennium fund and such moneys that may be provided by legislative appropriations. The Idaho millennium income fund shall be managed by the state treasurer and shall retain its own earnings. The uses of this fund shall be determined by legislative appropriation.

History.

I.C., § 67-1802, as added by 2000, ch. 1, § 1, p. 3; am. 2002, ch. 352, § 1, p. 1005; am. and redesign. 2006, ch. 187, § 6, p. 588.

STATUTORY NOTES

Cross References.

Idaho millennium fund, § 67-1803.

Idaho millennium permanent endowment fund, § 67-1801.

State treasurer, § 67-1201 et seq.

Amendments.

The 2006 amendment, by ch. 187, renumbered the section from § 67-1802, inserted “Idaho millennium permanent endowment fund, the” in the first sentence; and deleted the proviso from the end of the last sentence.

Compiler’s Notes.

Former § 67-1806 was amended and redesignated as § 67-1809, pursuant to S.L. 2006, ch. 187, § 8.

Effective Dates.

Section 5 of S.L. 2002, ch. 352, provides: “This act shall be in full force and effect on and after July 1, 2002, provided that the initial appointments authorized in Section 2 of this act may be made prior to the effective date of this act.”

Sections 10 and 11 of S.L. 2006, ch. 187 provide: “Section 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

“Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

§ 67-1807. Joint millennium fund committee — Creation and appointment of members. — There is hereby created the joint millennium fund committee, hereafter referred to as the committee. The committee shall consist of ten (10) members, each of whom shall be a member of the legislature. The committee members shall be appointed as follows: three (3) members shall be appointed by the president pro tempore of the senate, one (1) of whom shall be cochair of the committee; two (2) members shall be appointed by the minority leader of the senate; three (3) members shall be appointed by the speaker of the house of representatives, one (1) of whom shall be cochair of the committee; and two (2) members shall be appointed by the minority leader of the house of representatives. The term of a member of the committee shall coincide with the term of election to the legislature. A vacancy during the term of a member of the committee shall be filled by the appointing authority of that member, and members may be reappointed to a subsequent term.

History.

I.C., § 67-1804, as added by 2002, ch. 352, § 2, p. 1005; am. and redesign. 2006, ch. 187, § 7, p. 588.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 187, redesignated this section which was formerly compiled as § 67-1804.

Effective Dates.

Section 5 of S.L. 2002, ch. 352, provides: “This act shall be in full force and effect on and after July 1, 2002, provided that the initial appointments authorized in Section 2 of this act may be made prior to the effective date of this act.”

Sections 10 and 11 of S.L. 2006, ch. 187 provide: “Section 10. This act shall be in full force and effect on and after the date of adoption of Senate

Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

“Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

§ 67-1808. Powers and duties of the committee. — The committee shall have the following powers and duties:

(1) To meet not less than two (2) times each year; (2) To establish rules for governance and operation of committee proceedings; (3) To request applications for funding from the Idaho millennium income fund; (4) To meet to hear testimony and to consider applications for funding from the Idaho millennium income fund; (5) To evaluate the actual and potential success of programs funded with moneys from the Idaho millennium income fund; and (6) To present recommendations annually to the legislature for the use of the moneys in the Idaho millennium income fund.

History.

I.C., § 67-1805, as added by 2002, ch. 352, § 3, p. 1005; am. and redesign. 2006, ch. 187, § 8, p. 588.

STATUTORY NOTES

Cross References.

Idaho millennium income fund, § 67-1806.

Amendments.

The 2006 amendment, by ch. 187, redesignated this section which was formerly compiled as § 67-1805.

Effective Dates.

Section 5 of S.L. 2002, ch. 352, provides: “This act shall be in full force and effect on and after July 1, 2002, provided that the initial appointments authorized in Section 2 of this act may be made prior to the effective date of this act.”

Sections 10 and 11 of S.L. 2006, ch. 187 provide: “Section 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

“Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

§ 67-1809. Support and staff for the committee. — The legislative services office shall provide for the support and staffing of the committee as the committee may require in the performance of its duties.

History.

I.C., § 67-1806, as added by 2002, ch. 352, § 4, p. 1005; am. and redesign. 2006, ch. 187, § 9, p. 588.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

Amendments.

The 2006 amendment, by ch. 187, redesignated this section which was formerly compiled as § 67-1806.

Effective Dates.

Section 5 of S.L. 2002, ch. 352, provides: “This act shall be in full force and effect on and after July 1, 2002, provided that the initial appointments authorized in Section 2 of this act may be made prior to the effective date of this act.”

Sections 10 and 11 of S.L. 2006, ch. 187 provide: “Section 10. This act shall be in full force and effect on and after the date of adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law.

“Section 11. Upon the adoption of Senate Joint Resolution No. 107 by the electorate of the state of Idaho as required by law, the State Treasurer shall transfer ten million dollars of the fund balance of the Idaho Millennium Fund to the Idaho Millennium Permanent Endowment Fund.”

Senate Joint Resolution No. 107 was adopted by the electorate at the general election on November 7, 2006.

Chapter 19

STATE PLANNING AND COORDINATION

Sec.

67-1901. Purposes.

67-1902. Definitions.

67-1903. Strategic planning.

67-1904. Performance measurement.

67-1905. Training.

67-1906 — 67-1909. [Repealed.]

67-1910. Division of financial management — Administrator — Appointment.

67-1911. Financial management technical development committee.
[Repealed.]

67-1912. Community affairs functions and responsibilities of division.
[Repealed.]

67-1913. Funds of division.

67-1914. Purpose of act. [Repealed.]

67-1915. Duties, responsibilities and authority.

67-1916. Federal assistance management — Duties, responsibilities and authority.

67-1917. Reports by participating state agencies.

67-1918. Financial and accounting responsibilities of the division.

67-1919 — 67-1989. [Reserved.]

67-1990. Idaho centennial commission. [Null and void.]

§ 67-1901. Purposes. — The purposes of sections 67-1901 through 67-1905, Idaho Code, are to generate state agency planning and performance information that can be used to:

(1) Improve state agency accountability to state citizens and lawmakers; (2) Increase the ability of the legislature to assess and oversee agency performance; (3) Assist lawmakers with policy and budget decisions; and (4) Increase the ability of state agencies to improve agency management and service delivery and assess program effectiveness.

History.

I.C., § 67-1901, as added by 2005, ch. 339, § 2, p. 1057.

STATUTORY NOTES

Prior Laws.

Former §§ 67-1901 — 67-1903, which comprised S.L. 1935 (1st E.S.), ch. 8, §§ 1-3, p. 16, were repealed by S.L. 1955, ch. 234, § 10, p. 521.

Another former § 67-1901, which comprised **I.C., § 67-1901**, as added by 1993, ch. 168, § 1, p. 425; am. 1994, ch. 420, § 1, p. 1312, was repealed by S.L. 2005, ch. 339, § 1.

§ 67-1902. Definitions. — For purposes of sections 67-1901 through 67-1905, Idaho Code:

(1) “Agency” means each department, board, commission, office and institution, educational or otherwise, except elective offices, in the executive department of state government. “Agency” does not include legislative and judicial branch entities.

(2) “Benchmark” or “performance target” means the agency’s expected, planned or intended result for a particular performance measure. This information may come from an accepted industry standard for performance or from an agency’s careful study, research and/or analysis of the circumstances impacting performance capabilities.

(3) “Core function” means a group of related activities serving a common end of meeting the main responsibilities of the agency.

(4) “Goal” means a planning element that describes the broad condition, state or outcome an agency or program is trying to achieve.

(5) “Major division” means an organizational group within the agency that focuses on meeting one (1) or more of the agency’s primary statutory responsibilities.

(6) “Objective” means a planning element that describes a specific condition, state or outcome that an agency or program is trying to achieve as a step toward fulfilling its goals.

(7) “Performance measure” means a quantifiable indicator of an agency’s progress toward achieving its goals.

History.

I.C., § 67-1902, as added by 2005, ch. 339, § 3, p. 1057.

STATUTORY NOTES

Prior Laws.

Former § 67-1902 was repealed. See Prior Laws, § 67-1901.

Another former § 67-1902, which comprised I.C., § 67-1902, as added by 1993, ch. 168, § 1, p. 425; am. 1994, ch. 420, § 2, p. 1312, was repealed by S.L. 2005, ch. 339, § 1.

§ 67-1903. Strategic planning. — (1) Each state agency shall develop and submit to the division of financial management in an electronic format a comprehensive strategic plan for the major divisions and core functions of that agency. The plan shall be based upon the agency's statutory authority and, at a minimum, shall contain:

- (a) A comprehensive outcome-based vision or mission statement covering major divisions and core functions of the agency;
- (b) Goals for the major divisions and core functions of the agency;
- (c) Objectives and/or tasks that indicate how the goals are to be achieved;
- (d) Performance measures, developed in accordance with [section 67-1904, Idaho Code](#), that assess the progress of the agency in meeting its goals in the strategic plan, along with an indication of how the performance measures are related to the goals in the strategic plan;
- (e) Benchmarks or performance targets for each performance measure for, at a minimum, the next fiscal year, along with an explanation of the manner in which the benchmark or target level was established; and
- (f) An identification of those key factors external to the agency and beyond its control that could significantly affect the achievement of the strategic plan goals and objectives.

(2) The strategic plan shall cover a period of not less than four (4) years forward including the fiscal year in which it is submitted, and shall be updated annually.

(3) The strategic plan shall serve as the foundation for developing the annual performance information required by [section 67-1904, Idaho Code](#).

(4) When developing a strategic plan, an agency shall consult with the appropriate members of the legislature, and shall solicit and consider the views and suggestions of those persons and entities potentially affected by the plan. Consultation with legislators may occur when meeting the requirement of [section 67-1904\(7\), Idaho Code](#).

(5) Strategic plans are public records and are available to the public as provided in [section 74-102, Idaho Code](#).

(6) Each agency, department and commission shall seek to minimize the number of printed copies of strategic plans and annual reports by using electronic versions whenever possible, and by printing only a limited number sufficient for internal needs or anticipated requests for copies for which electronic versions are otherwise inadequate.

History.

[I.C., § 67-1903](#), as added by 2005, ch. 339, § 4, p. 1057; am. 2012, ch. 205, § 1, p. 545; am. 2015, ch. 141, § 167, p. 379.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Prior Laws.

Former § 67-1903 was repealed. See Prior Laws, § 67-1901.

Another former § 67-1903, which comprised [I.C., § 67-1903](#), as added by 1993, ch. 168, § 1, p. 425; am. 1994, ch. 420, § 3, p. 1312, was repealed by S.L. 2005, ch. 339, § 1.

Amendments.

The 2012 amendment, by ch. 205, inserted “in an electronic format” in the first sentence in the introductory paragraph in subsection (1) and added subsection (6).

The 2015 amendment, by ch. 141, substituted “74-102” for “9-338” in subsection (5).

§ 67-1904. Performance measurement. — (1) Every fiscal year, as part of its budget request, each agency shall prepare an annual performance report. The report shall be comprised of two (2) parts:

(a) Part I shall contain basic profile information for the prior four (4) fiscal years including statutory authority, fiscal year revenue and expenditure information and any informative breakdowns such as amounts from different revenue sources, types of expenditures, and data about the number and types of cases managed and/or key services provided to meet agency goals.

(b) Part II shall contain:

(i) Not more than ten (10) key quantifiable performance measures, which clearly capture the agency's progress in meeting the goals of its major divisions and core functions stated in the strategic plan required in [section 67-1903, Idaho Code](#). The goal(s) and strategies to which each measure corresponds shall also be provided. More measures may be requested by the germane committee chairs through the process set forth in subsection (7) of this section.

(ii) Results for each measure for the prior four (4) fiscal years. In situations where past data is not available because a new measure is being used, the report shall indicate the situation.

(iii) Benchmarks or performance targets for each measure for, at a minimum, the next fiscal year, and for each year of the four (4) years of reported actual results.

(iv) Explanations, where needed, which provide context important for understanding the measures and the results, and any other qualitative information useful for understanding agency performance.

(v) Attestation from the agency director that the data reported has been internally assessed for accuracy, and, to the best of the director's knowledge, is deemed to be accurate.

(2) Each agency performance report shall be presented in a consistent format, determined by the division of financial management, which allows

for easy review and understanding of the information reported.

(3) Each agency shall review the results of the performance measures compared to benchmarks or performance targets and shall use the information for internal management purposes.

(4) Each agency shall maintain reports and documentation that support the data reported through the performance measures. This information shall be maintained and kept readily available for each of the four (4) years covered in the most recent performance report.

(5) The performance report shall be submitted by the agency to the division of financial management and the budget and policy analysis office of the office of legislative services by September 1 of each year. In fiscal year 2006, agencies shall submit part I of the performance report required by subsection (1)(a) of this section no later than November 1, and are exempt from submitting part II of the performance report required by subsection (1)(b) of this section. In accordance with [section 67-3507, Idaho Code](#), agency performance reports shall be published each year as part of the executive budget document.

(6) The office of budget and policy analysis of the office of legislative services may incorporate all or some of the information submitted under this section in its annual legislative budget book.

(7) Each agency shall orally present the information from the performance report to its corresponding senate and house of representatives germane committees each year unless a germane committee elects to have an agency present such information every other year. The presentations shall consist of a review of agency performance information and shall provide an opportunity for dialogue between the agency and the committees about the sufficiency and usefulness of the types of information reported. Following any discussion about the information reported, the germane committees, in accordance with the requirements of this section, may request any changes to be made to the types of information reported. In fiscal year 2006, each agency shall be required only to present part I of the performance report required in subsection (1)(a) of this section and, at a minimum, a progress report on the implementation of part II of the performance report as set forth in subsection (1)(b) of this section.

(8) If an agency and its corresponding germane committees determine that it is not feasible to develop a quantifiable measure for a particular goal or strategy, the germane committees may request an alternative form of measurement.

(9) The senate and the house of representatives germane committees should attempt to meet jointly to hear and discuss an agency's performance report and achieve consensus regarding the types of measures to be reported.

(10) Any performance report or document required by this section shall be produced electronically and transmitted to the division of financial management and the legislative services office electronically. Additionally, the agency shall have the performance report or document required by this section available on its website so that the public may access it. Each agency, department and commission shall seek to minimize the number of printed copies of strategic plans and annual reports by using electronic versions whenever possible, and by printing only a limited number sufficient for internal needs or anticipated requests for copies for which electronic versions are otherwise inadequate.

History.

I.C., § 67-1904, as added by 2005, ch. 339, § 5, p. 1057; am. 2012, ch. 205, § 2, p. 545.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Office of legislative services, § 67-701 et seq.

Prior Laws.

Former § 67-1904, which comprised S.L. 1935 (1st E.S.), ch. 8, § 4, was repealed by S.L. 1955, ch. 234, § 10, p. 521.

Amendments.

The 2012 amendment, by ch. 205, added subsection (10).

§ 67-1905. Training. — Strategic planning and performance measurement training shall be held for both state agencies and lawmakers as follows:

(1) The division of financial management shall coordinate training for key agency personnel on the development, use and reporting of strategic planning and performance measurement information. The training shall be integrated into current agency training programs and shall be offered and required for agency staff at a frequency determined by the division of financial management.

(2) The office of performance evaluations and the office of budget and policy analysis of the office of legislative services shall coordinate training for legislators on the development and use of strategic planning and performance measurement information. The training shall be offered at least once every two (2) years to coincide with new legislative terms.

History.

I.C., § 67-1905, as added by 2005, ch. 339, § 6, p. 1057.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Office of legislative services, § 67-701 et seq.

Prior Laws.

Former § 67-1905, which comprised S.L. 1935 (1st E.S.), ch. 8, § 5, p. 16, was repealed by S.L. 1995, ch. 234, § 10, p. 521.

§ 67-1906 — 67-1909. State planning board. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1935 (1st E.S.), ch. 8, §§ 6-9, p. 16, were repealed by S.L. 1955, ch. 234, § 10, p. 521.

§ 67-1910. Division of financial management — Administrator — Appointment. — There is hereby created within the governor's office a division of financial management. The governor shall appoint an administrator for the division of financial management. The administrator shall be knowledgeable about finance, accounting, and budget principles. The administrator of the division may employ additional personnel as may be necessary, and may contract for professional services or assistance when necessary or desirable. All employees of the division of financial management shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

History.

I.C., § 67-1910, as added by 1974, ch. 22, § 19, p. 592; am. 1980, ch. 358, § 2, p. 922; am. 1995, ch. 365, § 5, p. 1276.

STATUTORY NOTES

Cross References.

Joint action by public agencies, §§ 67-2326 — 67-2333.

Prior Laws.

Former § 67-1910, which comprised S.L. 1970, ch. 84, § 1, p. 206, was repealed by S.L. 1974, ch. 22, § 1.

**§ 67-1911. Financial management technical development committee.
[Repealed.]**

Repealed by S.L. 2019, ch. 19, § 1, effective July 1, 2019.

History.

I.C., § 67-1911, as added by 1980, ch. 358, § 4, p. 922; am. 1984, ch. 1, § 1, p. 3; am. 1999, ch. 370, § 19, p. 976.

STATUTORY NOTES

Prior Laws.

Former § 67-1911, which comprised S.L. 1970, ch. 84, § 2, p. 206; am. 1974, ch. 22, § 20, p. 592, was repealed by S.L. 1980, ch. 358, § 3.

§ 67-1912. Community affairs functions and responsibilities of division. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1970, ch. 84, § 3, p. 206; am. 1974, ch. 22, § 21, p. 592, was repealed by S.L. 1980, ch. 358, § 3.

§ 67-1913. Funds of division. — When federal or other funds are received by the division, they shall be promptly transferred to the state treasurer and thereafter be expended only upon the approval of the administrator.

History.

1970, ch. 84, § 4, p. 206; am. 1974, ch. 22, § 22, p. 592.

STATUTORY NOTES

Cross References.

Administrator of division of financial management, § 67-1910.

State treasurer, § 67-1201 et seq, Compiler's Notes.

Section 6 of S.L. 1970, ch. 84 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 67-1914. Purpose of act. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-1914, as added by 1972, ch. 405, § 1, p. 1188, was repealed by S.L. 1980, ch. 358, § 3.

§ 67-1915. Duties, responsibilities and authority. — The division of financial management shall have the following duties, responsibilities, and authority:

1. To study and recommend to the governor methods of interdepartmental cooperation and consolidation within the executive branch of government;
2. To study and recommend to the governor methods for improving efficiency of interdepartmental functions;
3. To provide technical assistance to state agencies when requested;
4. To serve as a clearinghouse for information, data and material which may be helpful in determining needed legislation;
5. To have the power to petition for and receive monies such as grants or gifts;
6. To work to harmonize the planning activities of state agencies so that comprehensive statewide programs are consistent and to eliminate duplication where possible; and
7. To carry out continuing studies and analyses of the problems faced by the state and develop such recommendations for administrative or legislative action as would appear necessary.

History.

I.C., § 67-1915, as added by 1972, ch. 405, § 2, p. 1188; am. 1974, ch. 22, § 23, p. 592; am. 1980, ch. 358, § 5, p. 922.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

§ 67-1916. Federal assistance management — Duties, responsibilities and authority. — The division of financial management shall serve as the central information center for all state agencies requesting federal assistance. The division of financial management shall have the following duties, responsibilities and authority:

(1) To establish and maintain a central reporting and information service to keep the governor, the agencies of the state and its subdivisions, and the legislature informed of the intent of the state entities to apply for federal assistance throughout the state.

(2) To assist in the coordination of federal programs administered by more than one (1) state agency.

(3) To report, as requested by the legislature or its committees, on the status or condition of federal assistance programs in the state.

(4) To require that any state agency that participates in any federal assistance program shall make additional information available as necessary.

History.

I.C., § 67-1916, as added by 1982, ch. 288, § 2, p. 739.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Prior Laws.

A former § 67-1916, which comprised I.C., § 67-1916, as added by 1972, ch. 405, § 3, p. 1188; am. 1974, ch. 22, § 24, p. 592, was repealed by S.L. 1980, ch. 358, § 6.

§ 67-1917. Reports by participating state agencies. — (1) Any state agency that receives federal funds, anticipates receipt of federal funds or administers a program supported by federal funds shall provide reports on the use of federal funds as part of each agency's annual budget request to the division of financial management. The postsecondary educational institutions shall be provided an exception to these requirements and shall submit an audited schedule of expenditures of federal awards for the preceding fiscal year to the office of the state board of education, which shall consolidate such information and submit a report to the division of financial management. The reports required of all other agencies shall:

(a) Delineate the federal funds received for the preceding fiscal year; (b) Delineate the federal funds to be utilized by the state agency for the current and upcoming fiscal year. The report shall include federal funds appropriated by the legislature, federal funds continuously appropriated and any programs supported by federal funds, the loss of which may impact the continuity or delivery of services; (c) Identify the date, if known, on which federal funds are set to expire; (d) Identify any obligations, agreements, joint exercise of powers agreements, maintenance of effort agreements, or memoranda of understanding that may be impacted by federal or state decisions regarding federal receipts, including any state matching requirements; and (e) Calculate the percentage that constitutes federal funds to the total appropriation for the state agency for the fiscal year.

(2) If an agency receives notice of a reduction in federal funding from a specific federal grant of fifty percent (50%) or more from the previous year's funding, it shall develop a plan to either reduce or eliminate the services provided through the grant or to continue the services without a shift to state resources. The plan shall be included in the report required under subsection (1) of this section.

(3) As used in this section, "federal funds" means any financial assistance made by the United States government, or any agency thereof, whether a contract, grant subsidy, augmentation, reimbursement or in any other form.

History.

I.C., § 67-1917, as added by 1972, ch. 405, § 4, p. 1188; am. 1974, ch. 22, § 25, p. 592; am. 1980, ch. 358, § 7, p. 922; am. 2015, ch. 307, § 2, p. 1209; am. 2020, ch. 118, § 1, p. 369.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State board of education, § 33-101 et seq.

Amendments.

The 2015 amendment, by ch. 307, rewrote the section, which formerly read: “Any state agency that participates in any federal assistance program shall make additional information available as the division of financial management may require”.

The 2020 amendment, by ch. 118, designated the existing provisions as subsections (1) and (3) and added present subsection (2) and, in subsection (1), added paragraph (c) and added “including any state matching requirements” at the end of paragraph (d).

Legislative Intent.

Section 1 of S.L. 2015, ch. 307 provided: “Legislative Intent. It is the intent of the Legislature that federal funds being awarded to or administered by state agencies now constitute a significant portion of state expenditures. To have the Legislature ignore these funds would greatly undermine the authority of the Legislature to appropriate moneys. It is imperative that members of the Legislature, Executive Branch and the general public be able to see all the details of federal funds received by the state so that they can prepare for a possible reduction in federal funds, measure the impact of the programs supported with federal funds and act in the best interest of Idahoans.”

Effective Dates.

Section 61 of S.L. 1974, ch. 22 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-1918. Financial and accounting responsibilities of the division.

— It shall be the duty of the administrator of the division of financial management to work with the financial management technical development committee to:

(1) Develop and implement financial and management reporting systems to serve the needs of budget development and management support. Such systems shall be developed in consultation with the state controller, executive departments, legislature and other elected officials and shall be designed to assist department directors, the governor, and the legislature with their decision-making responsibilities;

(2) Develop recommended changes to the state account structure, accounting policies or accounting procedures, that would benefit financial and management reporting. Such recommendations shall be supplied to the state controller not later than May first of each fiscal year;

(3) Make studies of the effect of federal assistance programs in the state and advise the governor and the legislature of alternative recommended methods and procedures for the administration of these programs;

(4) Study and recommend to the governor methods for improving efficiency of interdepartmental financial functions;

(5) Perform such other duties and perform other studies assigned by the governor in the area of administration for the executive branch.

History.

I.C., § 67-1918, as added by 1980, ch. 358, § 8, p. 922; am. 1994, ch. 180, § 183, p. 420.

STATUTORY NOTES

Cross References.

Administrator of division of financial management, § 67-1910.

State controller, § 67-1001 et seq.

Compiler's Notes.

The financial management technical development committee, referred to in the introductory paragraph, was created by § 67-1911, which was repealed by S.L. 2019, ch. 19, § 1, effective July 1, 2019.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 183 was effective January 2, 1995.

• Title 67 •, « Ch. 19 », « § 67-1919—67-1989 »

Idaho Code § 67-1919 — 67-1989

§ 67-1919 — 67-1989. [Reserved.]

• Title 67 •, « Ch. 19 », « § 67-1990 •

Idaho Code § 67-1990

§ 67-1990. Idaho Centennial Commission. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 1988, ch. 3 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act [this section] shall be in full force and effect on and after its passage and approval and shall be null, void and no longer in force and effect on and after June 30, 1991.” Approved February 16, 1988.

Chapter 20

STATE BOARD OF EXAMINERS

Sec.

67-2001. Constitution of board.

67-2002. Meetings of board — Claims.

67-2003. Duties of secretary — Record of claims.

67-2004. Regulation of per diem traveling expense allowances.

67-2005. Voucher forms.

67-2006. Travel expense — Vouchers.

67-2007. Standard travel pay and allowances.

67-2008. Determination of rate of allowance.

67-2008A. Determination of rates of allowance — Foreign travel.

67-2009. Travel expense — Certificate and verification of claims.
[Repealed.]

67-2010. Supplies — Vouchers.

67-2011. Services — Vouchers for.

67-2012. Payroll — Vouchers.

67-2013. Filing, examination and correction of vouchers.

67-2014. Certification of claim by controller.

67-2015. Regulations for proof of claims.

67-2016. State controller's civil liability.

67-2017. Criminal liability for false certificate.

67-2018. Audit of claims.

67-2019. Rotary expense account — Authorization.

67-2020. Rotary expense account — Allowance.

67-2021. Rotary expense account — How drawn upon.

67-2022. Rotary expense account — Allowance of items.

67-2023. Controller drawing warrant for disapproved claims — Liability.

67-2024. Board may adopt policies and procedures.

67-2024A. Authorization for disposal of state surplus property.

67-2025. Moneys to be paid over to state treasurer at monthly intervals —
Bursar of state educational institutions may act as treasurer of school
organizations — Deposit of moneys — Liability of banks and officers.

67-2026. Taxes, fees and other amounts to be paid by electronic funds
transfer — Exception.

67-2026A. Failure to use electronic funds transfer.

67-2027. Board to provide for audits. [Repealed.]

67-2028. Law enforcement death benefits. [Repealed.]

67-2029 — 67-2031. [Repealed.]

§ 67-2001. Constitution of board. — The board of examiners created by section 18, article IV, of the constitution of the state of Idaho is styled the “State Board of Examiners.” The board shall be a self-governing agency in the department of self-governing agencies. The governor is chairman of the said board. The state controller is ex officio secretary of the state board of examiners.

History.

1890-1891, p. 45, § 1; reen. 1899, p. 24, § 1; reen. R.C., § 144; am. 1913, ch. 15, § 1, p. 55; compiled and reen. C.L. 11:1; C.S., § 230, I.C.A., § 65-2001; am. 1974, ch. 7, § 1, p. 34; am. 1994, ch. 180, § 184, p. 420; am. 1995, ch. 44, § 58, p. 65.

STATUTORY NOTES

Cross References.

Constitution and powers of board, Idaho [Const., Art. IV, § 18](#).

Claims against state, jurisdiction of supreme court, Idaho [Const., Art. V, § 10](#).

Department of self-governing agencies, § 67-2601 et seq.

State controller, § 67-1001 et seq.

Compiler’s Notes.

The attempted amendment of this section by S.L. 1939, ch. 113, § 14, in which the comptroller was substituted for the state auditor as ex officio secretary of the state board of examiners, was declared unconstitutional by *Wright v. Callahan*, [61 Idaho 167, 99 P.2d 961 \(1940\)](#).

Effective Dates.

Section 2 of S.L. 1974, ch. 7 provided that the act would be in full force and effect on and after July 1, 1974.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state

board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 184 was effective January 2, 1995.

Section 64 of S.L. 1995, ch. 44 declared an emergency and provided that §§ 4 and 58 — 62 should be in full force and effect on and after passage and approval; approved March 6, 1995; section 65 provided that all the remaining sections of the act should be in full force and effect on and after October 1, 1995.

CASE NOTES

Constitutionality.

The legislature cannot, by an amendment of this section, take from the auditor, a constitutional officer, a portion of the characteristic duties belonging to that office and devolve them upon a comptroller, an officer of its own creation. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

§ 67-2002. Meetings of board — Claims. — The state board of examiners shall have regular meetings not less frequently than monthly, and may hold such adjourned or special meetings as the chairman may direct and may meet at any time on call of the chairman or a majority of the board. No claim shall be examined and passed upon by any member unless a majority of the board is present.

History.

1890-1891, p. 45, § 2; reen. 1899, p. 24, § 2; reen. R.C., § 145; am. 1913, ch. 15, § 2, p. 55; reen. C.L. 11:2; C.S., § 231; am. 1925, ch. 121, § 1, p. 168; I.C.A., § 65-2002; am. 1976, ch. 42, § 26, p. 90; am. 1986, ch. 321, § 1, p. 788; am. 2007, ch. 335, § 1, p. 984.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 335, in the section catchline, substituted “Meetings” for “Sessions”; and substituted the first sentence for the former first two sentences, which read: “Regular sessions of the state board of examiners shall be held on the second Tuesday of each month. Other sessions may be held at such time and place, and upon such notice, as the board may by resolution prescribe.”

CASE NOTES

Drawing warrants.

Jurisdiction.

Drawing Warrants.

The state auditor [now state controller] cannot legally draw a warrant in favor of a claimant, except as authorized and directed so to do by the state board of examiners, whose duty it is to examine all claims, except salary and compensation fixed by law. *In re Huston*, 27 Idaho 231, 147 P. 1064 (1915).

Jurisdiction.

Court has no jurisdiction to determine how board of examiners should act. **Pyke v. Steunenberg**, 5 Idaho 614, 51 P. 614 (1897).

Cited **Suppiger v. Enking**, 60 Idaho 292, 91 P.2d 362 (1939).

§ 67-2003. Duties of secretary — Record of claims. — It is the duty of the state controller, acting as secretary of the board of examiners, to receive and file all claims against the state, and for this purpose he shall keep a book in which shall be entered a record of all claims so presented, giving the name and address of each claimant, the amount claimed, the amount allowed by the board, the number of the warrant by which paid, and such other information as may be necessary in order to preserve a complete history of each claim.

History.

R.C., § 145a, as added by 1913, ch. 15, § 3, p. 56; am. C.L. 11:3; C.S., § 232; I.C.A., § 65-2003; am. 1994, ch. 180, § 185, p. 420.

STATUTORY NOTES

Cross References.

Allowed claims to be preserved by state controller, § 67-1041.

Claims to be exhibited to state controller, § 67-1023.

Compiler's Notes.

The attempted amendment of this section by S.L. 1939, ch. 113, § 15 which read: "It is the duty of the comptroller, acting as secretary of the board of examiners, to receive and file all claims against the state, and for this purpose he shall keep a record in which shall be entered the name of each claimant, the amount claimed, the amount allowed by the board, and each such other information as may be necessary in order to preserve a summary of each claim. After the claim has been acted upon by the board of examiners he shall forthwith transmit the same with a duplicate of such record verified by him and bearing the certificate of the board of examiners, to the state auditor, which shall be authority to him to issue warrant for payment of each such claim in the amount approved for payment, except as otherwise provided by law. The state auditor shall enter on such record the number of the warrants by which each claim is paid, and shall preserve such

claims and such certified record in his office” was declared unconstitutional by *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 185 was effective January 2, 1995.

CASE NOTES

Constitutionality.

The legislature cannot, by an amendment of this section, take from the auditor [now state controller], a constitutional officer, a portion of the characteristic duties belonging to the office and devolve them upon a comptroller, an officer of its own creation. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Cited *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

§ 67-2004. Regulation of per diem traveling expense allowances. —

The state board of examiners is hereby authorized to adopt regulations fixing the daily, half-day and quarter-day allowances to be made to state officials and employees traveling on official business, within the lawful maximum daily subsistence allowance rate, and to require, by such regulations, such proofs in support of travel subsistence claims as may be deemed by it conducive to public economy.

History.

1943, ch. 78, § 1, p. 162.

CASE NOTES

Application of Section.

The majority of the board of examiners cannot after having determined the form of a voucher for submission of claims, and claims having been so submitted, require a different form nor can it reject something which it required to be done in the premises, so long as the statutory requirements have been complied with. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

§ 67-2005. Voucher forms. — It is the duty of the state controller to prescribe forms of vouchers on which all requests for expenditure of state moneys must be submitted, and when such forms of vouchers have been prescribed no request for expenditure of state moneys shall be received and filed by the state controller unless the same shall be presented on the proper form.

History.

R.C., § 145b, as added by 1913, ch. 15, § 3, p. 56; am. C.L. 11:4; C.S., § 233; I.C.A., § 65-2004; am. 1976, ch. 42, § 27, p. 90; am. 1994, ch. 180, § 186, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Compiler's Notes.

The attempted amendment of this section by S.L. 1939, ch. 113, § 16, in which the word “comptroller” was substituted for “state auditor”, was declared unconstitutional by *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 186 was effective January 2, 1995.

CASE NOTES

Constitutionality.

The legislature cannot, by an amendment of this section, take from the auditor [now state controller] a constitutional officer, a portion of the characteristic duties belonging to the office and devolve them upon a comptroller, an officer of its own creation. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Cited *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

§ 67-2006. Travel expense — Vouchers. — On all vouchers submitted for travel expenses, there must appear a certificate signed by the head of the department for which the travel was performed, stating that the travel was performed under competent orders, the purpose for which it was undertaken, and that the same was necessary in the public service. The person submitting a voucher for travel expenses must sign thereon a certificate that the account is correct and just.

History.

R.C., § 145c, as added by 1913, ch. 15, § 3, p. 56; reen. C.L. 11:5; C.S., § 234; am. 1927, ch. 201, § 1, p. 279; I.C.A., § 65-2005.

STATUTORY NOTES

Cross References.

Regulation of per diem traveling expense allowances, § 67-2004.

§ 67-2007. Standard travel pay and allowances. — This act may be cited as the “Standard Travel Pay and Allowance Act of 1949.” It is the express intention of this act that the provisions hereof shall supersede and control the language of any statute heretofore enacted relating to the allowance of requests for reimbursement for travel and/or subsistence, including, but without limitation, statutes which provide for the payment of actual and necessary expenses to any officer, agent, employee, clerk, board or commission of the state; and it is further intended that the provisions of this act, and regulations issued hereunder, shall apply to and govern all acts authorizing the payment for travel and/or subsistence which may be enacted hereafter unless the same shall be expressly exempted from the terms of this act. Such acts shall be construed as being subject to the provisions of this act unless an express exemption shall be set forth in such subsequent act.

History.

1949, ch. 161, § 1, p. 349; am. 1976, ch. 42, § 28, p. 90.

STATUTORY NOTES

Prior Laws.

Former § 67-2007, which comprised S.L. 1923, ch. 71, § 1, p. 78; 1927, ch. 201, § 2, p. 279; 1929, ch. 258, § 1, p. 527; I.C.A., § 65-2006; 1941, ch. 19, § 1, p. 36, was repealed by S.L. 1949, ch. 161, § 3.

Compiler’s Notes.

The term “this act” in this section refers to S.L. 1949, Chapter 161, which is compiled as §§ 67-2007 and 67-2008.

The term “hereafter” near the end of the second sentence was present in the enactment of this section by S.L. 1949, Chapter 161 and refers to any time after the effective date of that act, March 12, 1949.

§ 67-2008. Determination of rate of allowance. — (1) At its first meeting after the effective date of this act, and thereafter as it shall deem appropriate, the board of examiners shall by regulation fix a rate of allowance for per diem subsistence for officers, agents and all other employees of the state who are absent from their post of duty on official business, which shall be effective for the year in which such allowance is fixed, and shall fix a rate of allowance for mileage for official travel executed by privately owned means of conveyance, which rate of allowance shall be effective for the year in which it is fixed; provided, however, that the board shall fix no rate of per diem allowance which is higher than:

(a) Actual lodgings (maximum to be set by board of examiners) and meal allowance which is no higher than allowed under the Internal Revenue Code for travel within the state; and

(b) Actual lodgings (maximum to be set by board of examiners) and meal allowance which is no higher than allowed under the Internal Revenue Code without the state; and

(c) A rate of mileage allowance which is no higher than the standard mileage rate for the business use of an automobile allowed under the Internal Revenue Code for income tax purposes; and

(d) The mileage allowance for private aircraft travel shall be set by the board and shall be no higher than that allowed for automobile travel, calculated as if the travel had been by highway route.

(2) In fixing rates of allowance under this act, the board shall consider the prevailing cost of executing such travel, generally prevailing economic conditions, and the rates of allowance made applicable to similar travel by the federal government and private employers within the state.

(3) For a period where employees are to be absent from their post on official business for less than twenty-four (24) hours the board's regulations shall provide for partial days' subsistence rates.

History.

1949, ch. 161, § 2, p. 349; am. 1953, ch. 191, § 1, p. 300; am. 1955, ch. 108, § 1, p. 233; am. 1959, ch. 140, § 1, p. 315; am. 1973, ch. 41, § 1, p. 76; am. 1974, ch. 298, § 1, p. 1789; am. 1975, ch. 44, § 1, p. 83; am. 1976, ch. 42, § 29, p. 90; am. 1978, ch. 249, § 1, p. 548; am. 1980, ch. 303, § 1, p. 780; am. 1984, ch. 78, § 1, p. 145; am. 1990, ch. 162, § 1, p. 354; am. 2001, ch. 13, § 1, p. 15.

STATUTORY NOTES

Prior Laws.

Former § 67-2008, which comprised S.L. 1923, ch. 71, § 2, p. 78; 1927, ch. 201, § 3, p. 279; I.C.A., § 65-2007; 1941, ch. 17, § 1, p. 33, was repealed by S.L. 1949, ch. 161, § 3.

Federal References.

For deductions for business and traveling expenses under the Internal Revenue Code, see [26 U.S.C.S. § 162](#) and [26 C.F.R. § 1.162-1](#) et seq.

Compiler's Notes.

The phrase “the effective date of this act” near the beginning of subsection (1) refers to the effective date of S.L. 1949, Chapter 161, which was March 12, 1949.

The term “this act” in subsection (2) refers to S.L. 1949, Chapter 161, which is compiled as §§ 67-2007 and 67-2008.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of S.L. 1949, ch. 161 declared an emergency. Approved March 12, 1949.

Section 2 of S.L. 1959, ch. 140 declared an emergency. Approved March 12, 1959.

Section 2 of S.L. 1980, ch. 303 declared an emergency and stated that the act should be in full force and effect on and after February 1, 1980. Approved April 1, 1980.

§ 67-2008A. Determination of rates of allowance — Foreign travel.

— The board of examiners shall determine reasonable rates of allowance for per diem subsistence for officers, agents and employees of the state who are absent from their post of duty on official business in a foreign country. In determining such rates of allowance, the limitations of section 67-2008, Idaho Code, shall not apply. The board shall determine rates of allowance which are reasonable based upon factors such as the prevailing cost of executing such travel, generally prevailing economic conditions, and the rates of allowance made applicable to similar travel by the federal government and private employers within the state.

History.

I.C., § 67-2008A, as added by 1988, ch. 14, § 1, p. 17.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1988, ch. 14 declared an emergency. Approved March 2, 1988.

**§ 67-2009. Travel expense — Certificate and verification of claims.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section which comprised S.L. 1923, ch. 71, § 3, p. 78; I.C.A., § 65-2008, was repealed by S.L. 1976, ch. 42, § 41.

§ 67-2010. Supplies — Vouchers. — Vouchers submitted for supplies furnished the state must set forth in itemized form the number or amount, and price of each article included in the account. Such vouchers must contain certificates signed by the head of the department or institution to the effect that the supplies were ordered by proper authority, that they were necessary in the public service, that the account is correct and just, and that the supplies charged for have actually been received in number and amount as charged.

History.

R.C., § 145d, as added by 1913, ch. 15, § 3, p. 56; reen. C.L. 11:6; C.S., § 235; am. 1927, ch. 201, § 4, p. 279; I.C.A., § 65-2009; am. 1972, ch. 406, § 2, p. 1191.

CASE NOTES

Form of Voucher.

The majority of the board of examiners cannot after having determined the form of a voucher for submission of claims, and claims having been so submitted, require a different form nor can it reject something which it required to be to be done in the premises, so long as the statutory requirements have been complied with. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

§ 67-2011. Services — Vouchers for. — Vouchers submitted for services other than the payment of salaries, fixed by law must set forth the particular service rendered, the rate of pay, and the total amount due. Where the voucher covers separate noncontinuous services each item must be separately stated. Such vouchers must contain a certificate from the head of the department or institution to the effect that the services were necessary in the public service, that they were actually rendered as charged, and that the account is correct and just.

History.

R.C., § 145e, as added by 1913, ch. 15, § 3, p. 56; reen. C.L. 11:7; C.S., § 236; am. 1927, ch. 201, § 5, p. 279; I.C.A., § 65-2010; am. 1972, ch. 406, § 3, p. 1191.

CASE NOTES

Cited *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

§ 67-2012. Payroll — Vouchers. — For all institutions or departments where the officers and employees are paid a fixed salary, a voucher may be submitted in the form of a regular periodic payroll covering the compensation of such officers and employees. Subject to the rules of the state board of examiners, a warrant will be issued by the state controller to each person carried on such rolls for the amount shown thereon. The vouchers must contain a certificate from the head of the department or institution to the effect that the services were necessary in the public service, that they were actually rendered as charged, that the rate of pay of each individual carried thereon has been lawfully fixed by proper authority and that the account is correct and just.

History.

R.C., § 145f, as added by 1913, ch. 15, § 3, p. 57; reen. C.L. 11:8; C.S., § 237; I.C.A., § 65-2011; am. 1939, ch. 266, § 1, p. 654; am. 1943, ch. 99, § 1, p. 193; am. 1977, ch. 178, § 10, p. 459; am. 1994, ch. 180, § 187, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 2 of S.L. 1939, ch. 266 declared an emergency. This bill became a law on March 15, 1939, not having been signed by the governor, nor filed, together with his objections, in the office of the secretary of state within ten days after the adjournment of the legislature.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch.

180, § 187 was effective January 2, 1995.

CASE NOTES

Costs.

Estoppel.

Form of vouchers.

Mandamus to compel payment of salary.

Warrants drawn as approved.

Costs.

In mandamus proceeding to command a game warden to approve and certify former chief clerk's claim, which game warden's predecessor should have approved and certified, costs are not allowable against defendant. *Doolittle v. Eckert*, 53 Idaho 384, 24 P.2d 36 (1933).

Estoppel.

That a chief clerk in the fish and game department signed a payroll in the nature of receipt, and accepted and cashed warrants for less than statutory salary, does not estop her from, thereafter, claiming balance. *Doolittle v. Eckert*, 53 Idaho 384, 24 P.2d 36 (1933).

Form of Vouchers.

The majority of the board of examiners cannot, after having determined the form of a voucher for submission of claims, and claims having been so submitted, require a different form nor can it reject something which it required to be done in the premises, so long as the statutory requirements have been complied with. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Mandamus to Compel Payment of Salary.

Where a former game warden caused less than the statutory salary to be paid to a former chief clerk, a mandamus is available to command game warden's successor to approve and certify a claim to the auditor [now state controller] for the balance and command the auditor to issue warrant therefor. *Doolittle v. Eckert*, 53 Idaho 384, 24 P.2d 36 (1933).

Warrants Drawn as Approved.

A state auditor [now state controller] is not required to draw a warrant for payment of salary of an employee of the fish and game department, except as approved and certified by the game warden. **Doolittle v. Eckert, 53 Idaho 384, 24 P.2d 36 (1933).**

Cited Padgett v. Williams, 82 Idaho 28, 348 P.2d 944 (1960).

§ 67-2013. Filing, examination and correction of vouchers. —
Whenever a voucher is received by the state controller he shall before filing the same, examine or cause it to be examined prior to payment and, if it is not correct in form or amount, or if there are no moneys in the state treasury out of which the same may lawfully be paid, he shall forthwith return the same to the party rendering the account for correction or for submission at a later date if there is made an appropriation out of which the same may lawfully be paid.

History.

R.C., § 145g, as added by 1913, ch. 15, § 3, p. 57; reen. C.L. 11:9; C.S., § 238; I.C.A., § 65-2012; am. 1976, ch. 42, § 30, p. 90; am. 1994, ch. 180, § 188, p. 420.

STATUTORY NOTES

Compiler's Notes.

The attempted amendment of this section by S.L. 1939, ch. 113, § 17 which read: "Whenever a voucher is received by the state auditor he shall before issuing a warrant for payment thereof, ascertain if there are funds in the state treasury out of which the same may be lawfully paid, and if there are no funds out of which the same may be lawfully paid he shall forthwith return it to the comptroller, who shall forthwith return the same to the party rendering the account for submission at a later date if and when funds are available for payment" was declared unconstitutional by *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 188 was effective January 2, 1995.

CASE NOTES

Constitutionality.

The legislature cannot, by amendment of this section, take from the auditor [now state controller], a constitutional officer, a portion of his characteristic duties and devolve them upon a comptroller, an officer of its own creation. [Wright v. Callahan, 61 Idaho 167, 99 P.2d 961 \(1940\).](#)

§ 67-2014. Certification of claim by controller. — On all claims submitted to the state board of examiners for their action, the state controller must certify that the claim is in proper form, that the totals carried thereon are correct, that receipts when required by law or regulation of the board covering items for which reimbursement is asked are submitted therewith, and that, subject to the provisions of section 67-1212, Idaho Code, there are moneys in the state treasury out of which the same may be lawfully paid.

History.

R.C., § 145h, as added by 1913, ch. 15, § 3, p. 57; reen. C.L. 11:10; C.S., § 239; am. 1927, ch. 201, § 6, p. 279; I.C.A., § 65-2013; am. 1976, ch. 42, § 31, p. 90; am. 1994, ch. 180, § 189, p. 420.

STATUTORY NOTES

Cross References.

Claims to have indorsed thereon state controller's certificates, § 67-2018.

State controller, § 67-1001 et seq.

Compiler's Notes.

The attempted amendment of this section by S.L. 1939, ch. 113, § 18, in which the comptroller was substituted for the state auditor as the official to certify accounts, was declared unconstitutional by *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch.

180, § 189 was effective January 2, 1995.

CASE NOTES

Controller's liability for mistake.

Availability of money to pay claim.

Board to pass on claims.

Constitutionality.

Jurisdiction of supreme court.

Controller's Liability for Mistake.

If a mistake is made by the auditor [now state controller] in drawing a warrant upon the wrong fund, in absence of collusion, theft, or actual fraud, resort should be had to a civil rather than criminal remedy. *In re Huston*, 27 Idaho 231, 147 P. 1064 (1915).

Availability of Money to Pay Claim.

Certificate of auditor [now state controller] or order of board of examiners is not conclusive on question of whether appropriation is available to pay claim. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

No warrant can issue to pay claim even though allowed by board of examiners unless legislature has made appropriation to cover same. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

Auditor [now state controller] may draw warrant on adjutant general's contingent fund to pay expenses incurred when governor proclaimed martial law, although there was not sufficient money in said fund to pay such warrants. *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931).

Board to Pass on Claims.

If claim against state was originally incurred in violation of statute and constitution, prohibiting expenditures in excess of appropriations, subsequent attempt of legislature to pay claim which had not been passed upon by state board of examiners was unconstitutional. *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Where state industrial insurance fund became exhausted and department contracted debts in excess of specific appropriation therefor, statute enacted before state board of examiners had passed upon or approved claims for such excess expenditures violated constitution prohibiting legislature from passing on claims against state not acted on by state board of examiners, and constitution forbidding passage of “local or special laws.” *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

The constitution creates the state board of examiners as a tribunal with full power and jurisdiction to pass upon all claims against the state, except salary and compensation fixed by law. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

The board of examiners in observance of its duty to examine claims against the state other than salaries and compensation fixed by law must determine whether the claim is in proper form, properly certified by the state auditor [now state controller] and within the scope of the enactment providing the appropriation and payable therefrom. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Constitutionality.

The legislature cannot by an amendment of this section, take from the auditor [now state controller], a constitutional officer, a portion of the characteristic duties belonging to the office and devolve them upon a comptroller, an officer of its own creation. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Jurisdiction of Supreme Court.

The supreme court’s jurisdiction to hear claims against the state not being related to claims for payment of which no appropriation has been made but embracing all claims not included within the classes excepted, it had authority to compel the board of examiners to examine and approve for payment claims of children’s commission upon determining that they were proper as to form, certification and chargeability against the appropriation. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Cited *State ex rel. Graham v. Enking*, 59 Idaho 321, 82 P.2d 649 (1938).

§ 67-2015. Regulations for proof of claims. — The state board of examiners shall make such regulations not inconsistent with law in relation to proof of claims against the state as in its judgment will safeguard the funds of the state and facilitate the examination of claims.

History.

1927, ch. 201, § 7, p. 279; I.C.A., § 65-2014.

CASE NOTES

Cited *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

§ 67-2016. State controller's civil liability. — For the proper performance of the duties herein enjoined upon the state controller, as secretary of the state board of examiners, or for any unlawful or irregular payment of any account submitted against the state, the state controller is hereby made responsible upon his official bond.

History.

R.C., § 145i, as added by 1913, ch. 15, § 3, p. 57; reen. C.L. 11:11; C.S., § 240; I.C.A., § 65-2015; am. 1994, ch. 180, § 190, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Compiler's Notes.

The attempted amendment of this section by S.L. 1939, ch. 113, § 19 which read: "For any unauthorized payment of any account submitted against the state, and for the payment of any account for which there are no funds lawfully available, the state auditor is hereby made responsible upon his official bond" was declared unconstitutional by *Wright v. Callahan*, [61 Idaho 167, 99 P.2d 961 \(1940\)](#).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 190 was effective January 2, 1995.

CASE NOTES

Auditor's liability for mistake.

Constitutionality.

Auditor's Liability for Mistake.

If a mistake is made by the auditor [now state controller] in drawing a warrant upon the wrong fund, in absence of collusion, theft, or actual fraud, resort should be had to a civil rather than criminal remedy. *In re Huston*, 27 Idaho 231, 147 P. 1064 (1915).

Constitutionality.

The legislature cannot by an amendment of this section, take from the auditor [now state controller], a constitutional officer, a portion of the characteristic duties belonging to the office and devolve them upon a comptroller, an officer of its own creation. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

§ 67-2017. Criminal liability for false certificate. — The making of any false certificate on any voucher on which money is to be paid by the state, for the purpose of securing or aiding to secure the payment of any moneys not a just and proper charge against the state, is hereby declared to be a felony under the provisions of section 18-2706[, Idaho Code].

History.

R.C., § 145j, as added by 1913, ch. 15, § 3, p. 58; reen. C.L. 11:12; C.S., § 241; I.C.A., § 65-2016; am. 1976, ch. 42, § 32, p. 90.

STATUTORY NOTES

Cross References.

Penalty for felony when not otherwise provided, § 18-112.

Compiler's Notes.

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

§ 67-2018. Audit of claims. — It is the duty of the state board of examiners to examine all claims, except salaries and compensation of officers fixed by law, and except fixed appropriations for principal and interest of the public bonded debt, and except claims against the state already presented to the board and favorably reported by it to the legislature for passage. The board may approve or disapprove any claim or demand against the state, or any item thereof, or may recommend a less amount in payment of the whole, or any item thereof, and a decision of a majority of the members shall stand as the decision of the board. But no claim shall be examined, considered or acted upon by said board, unless the state controller, as secretary of the state board of examiners, shall have indorsed thereon the certificates required to be made by him by section 67-2014, Idaho Code, and unless receipted vouchers are filed therewith showing the payment of all items for which reimbursement is asked.

Expenditures for the ordinary operations of state government, for which appropriations have been made, need not be examined or reviewed by the board of examiners.

History.

1890-1891, p. 45, § 3; reen. 1899, p. 24, § 3; am. 1903, p. 373, § 1; am. 1905, p. 365, § 1; reen. R.C., § 146; am. 1913, ch. 15, § 4, p. 58; am. C.L. 11:13; C.S., § 242; I.C.A., § 65-2017; am. 1976, ch. 42, § 33, p. 90; am. 1994, ch. 180, § 191, p. 420.

STATUTORY NOTES

Cross References.

Allowed claims to be preserved by state controller, § 67-1041.

Claims to be exhibited to state controller, § 67-1023.

Jurisdiction of board of examiners and remedies afforded creditors of the state, Idaho [Const., Art. IV, § 18](#), and Idaho [Const., Art. V, § 10](#).

State controller, § 67-1001 et seq.

Compiler's Notes.

The attempted amendment of this section by S.L. 1939, ch. 113, § 20 which would have changed the last sentence of this section to read as follows: "But no claim shall be examined, considered, or acted upon by said board, unless accompanied by the certificate of the state auditor that there are funds in the state treasury out of which the same may be lawfully paid and unless receipted vouchers are submitted therewith showing the payment of all items for which reimbursement is asked" was declared unconstitutional by *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 191 was effective January 2, 1995.

CASE NOTES

Authority of state controller.

Board's discretion.

Board to pass on claims.

Claims to be presented.

Constitutionality.

Effect of order and certificate.

Fixed claims.

Jurisdiction of supreme court.

Authority of State Controller.

State auditor [now state controller] may legally draw a warrant in favor of a claimant only as authorized and directed to do so by state board of

examiners. *In re Huston*, 27 Idaho 231, 147 P. 1064 (1915).

Auditor [now state controller] may draw warrant on adjutant general's contingent fund to pay expenses incurred when governor proclaimed martial law, although there was not sufficient money in said fund to pay such warrants. *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931).

Board's Discretion.

This section, insofar as it provides that the board of examiners may disapprove any claim or demand against the state, cannot be interpreted as vesting an absolute discretion in the board of examiners to approve or disapprove any claim or demand against the state for so to do would render this section unconstitutional as an attempt to delegate legislative power to the board violative of the basic sovereign power of the legislature to make laws with accompanying express or implicit legislative policy which the board could annul in the case of any enactment carrying an appropriation by denial of claims for the payment of which the legislature had made such appropriation. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Board to Pass on Claims.

If claim against state was originally incurred in violation of statute, and constitution prohibiting expenditures in excess of appropriations, subsequent attempt of legislature to pay claim which had not been passed upon by state board of examiners was unconstitutional. *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

Where state industrial insurance fund became exhausted and department contracted debts in excess of specific appropriation therefor, statute enacted before state board of examiners had passed upon or approved claims for such excess expenditures violated constitution prohibiting legislature from passing on claims against state not acted on by state board of examiners, and constitution forbidding passage of "local or special laws." *State ex rel. Hansen v. Parsons*, 57 Idaho 775, 69 P.2d 788 (1937), overruled on other grounds, *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

The authority of the board of examiners as to claims based on obligations authorized by the legislature against a specific appropriation made by the

legislature is limited to determining whether the claims are in proper form, properly certified to the state auditor [now state controller], whether they are chargeable against such appropriation; and whether there are funds remaining in the appropriation for such payment. The board cannot veto an act of the legislature or reverse the policy declared therein by refusing to approve a properly presented claim. *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959); *Padgett v. Williams*, 82 Idaho 114, 350 P.2d 353 (1960).

Where the board of highway directors was empowered to hire legal counsel of its own choosing and salaries were authorized against a specific appropriation, the board of examiners was limited to determining that the claim for payment of its legal counsel was in the proper form, properly certified to the state auditor [now state controller] by the department of highways, and chargeable against the appropriation. *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

If the legislature has not previously appropriated moneys for payment of the item for which a claim has been submitted, then the board of examiners may recommend or refuse to recommend that it be submitted to the succeeding session of the legislature for payment. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Claims to be Presented.

Claim arising out of a contract for construction of a state wagon road, which stipulates for final payment when the contract is executed to the satisfaction of commissioners and board of examiners, must be submitted for approval of board of examiners before auditor [now state controller] can be required to issue his warrant therefor. *Winters v. Ramsey*, 4 Idaho 303, 39 P. 193 (1895).

All claims of whatever character against the state must be submitted to board. *State v. National Sur. Co.*, 29 Idaho 670, 161 P. 1026 (1916).

This section confers no power on state board of examiners to pass upon claims against board of regents of state university. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

Claims against proceeds of federal and private appropriations to state board of university need not be passed upon by state board of examiners. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

No warrant can issue to pay claim, even though allowed by board of examiners, until legislature has made appropriation to cover same. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

Board of examiners was held authorized to approve claim for pay of national guardsman called out by governor without certification that adjutant general's contingent fund contained sufficient money to pay such claim. *McConnel v. Gallet*, 51 Idaho 386, 6 P.2d 143 (1931).

Constitutionality.

The legislature cannot, by an amendment of this section, take from the state auditor [now state controller], a constitutional officer a portion of the characteristic duties belonging to the office and devolve them upon a comptroller, an officer of its own creation. *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

The legislature, in the exercise of its authority to prescribe "such other duties" under Idaho *Const., Art. IV, § 18*, has seen fit to prescribe the duty of examination of claims by the board of examiners and its authority so exercised is within the scope of and in harmony with the quoted provision of the *Constitution*. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Effect of Order and Certificate.

Order of board and certificate of auditor [now state controller] is not conclusive on question of whether appropriation is available to pay claim. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

Fixed Claims.

If the amount of a claim has been fixed or settled by lawful contract or by authority of the department head of a state agency or other person authorized by law to fix the same, then the board of examiners exercises only a ministerial function in examining and approving the claim for paying after having determined that the claim is proper as to form, certification and chargeability against the appropriation. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Jurisdiction of Supreme Court.

The supreme court's jurisdiction to hear claims against the state not being related to claims for payment of which no appropriation has been made but

embracing all claims not included within the classes excepted, it had authority to compel the board of examiners to examine and approve for payment claims of children's commission upon determining that they were proper as to form, certification and chargeability against the appropriation. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Cited *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

Decisions Under Prior Law

Effect of Order and Certificate.

Under a territorial statute requiring persons having claims against territory to exhibit same, with the evidence in support thereof, to controller to be audited, settled, and allowed, controller had discretion in allowing a claim and issuing his warrant therefor, although same had been certified and corrected by another territorial officer, whose duty it was to examine and certify accounts of the controller when satisfied of their legality. *Crutcher v. Cram*, 1 Idaho 372 (1871).

§ 67-2019. Rotary expense account — Authorization. — A revolving or general expense account may be created by the state board of examiners for any state officer, department, board or institution in the manner provided in sections 67-2020 to 67-2022, Idaho Code, and not otherwise.

History.

1919, ch. 39, § 1, p. 138; C.S., § 243; I.C.A., § 65-2018; am. 1976, ch. 42, § 34, p. 90.

STATUTORY NOTES

Effective Dates.

Section 42 of S.L. 1976, ch. 42 provided that the 1976 amendment to this section would be in full force and effect on and after July 1, 1977.

CASE NOTES

Constitutionality.

Delegation of power.

No appropriation.

Not unlawful withdrawal of money.

Constitutionality.

The revolving fund statutes are not invalid as an unlawful delegation of legislative power, since they do not contemplate the making of appropriation by the board of examiners. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

The revolving fund statutes do not impinge on the constitutional inhibition against “a loan or credit” by the state. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

Delegation of Power.

The revolving fund statutes, for which an appropriation has been made as expressly provided thereby, do not, by the setting up of a scheme for cash advances for expenses by administrative and executive action and then giving this power to the board, delegate any legislative functions. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

The revolving fund statutes are not invalid as delegating the legislative function, since the legislature has exercised its function by making the appropriation, and has merely granted authority within defined and safeguarded limitations for the executive and administrative action thereon, and such statutes become operative only when provided with an appropriation thereby. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

No Appropriation.

Where a statute provides that the revolving fund may be created by the state board of examiners for any state officer, this does not operate to bring into existence any new or additional fund where the examiners allow a requisition for cash advances of the industrial accident board pursuant to the amount of appropriation made by the legislature. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

Not Unlawful Withdrawal of Money.

The revolving fund statutes, setting aside a fund for cash advances of the industrial accident board, is not an unlawful withdrawal of money from the treasury without an appropriation, since the appropriation made by the legislature remained the limit. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

§ 67-2020. Rotary expense account — Allowance. — The requisition of the head of any department, board or institution or the disbursing officer thereof requesting a revolving account shall be acted upon by the board of examiners in the same manner as a claim against the state and, if allowed, shall be regarded as an advance for current cash items, and not for any kind of salary or wage advance. It shall be allowed only in case an appropriation has been made by law for the specific expenditures intended to be paid out of the account. The amount of the revolving account shall be charged by the state controller against the officer making the requisition who may, if the board deems necessary, be required to give a bond in addition to his official bond, in such sum as the board may fix, to secure the repayment of such account.

History.

1919, ch. 39, § 2, p. 138; C.S., § 244; I.C.A., § 65-2019; am. 1976, ch. 42, § 35, p. 90; am. 1994, ch. 180, § 192, p. 420.

STATUTORY NOTES

Cross References.

Audit of state claims, § 67-2018.

State controller, § 67-1001 et seq.

Effective Dates.

Section 42 of S.L. 1976, ch. 42 provided that the 1976 amendment to this section would be in full force and effect on and after July 1, 1977.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994. and the amendment of this section by S.L. 1994, ch.

180, § 192 was effective January 2, 1995.

CASE NOTES

Constitutionality.

Current cash item.

No new fund created.

Constitutionality.

The revolving fund statutes do not impinge on the constitutional inhibition against “a loan or credit” by the state. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

Under the revolving fund statutes, the setting aside a fund for cash advances of the industrial accident board is not an unlawful withdrawal of money from the treasury, without an appropriation, since the appropriation made by the legislature remained the limit. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

Current Cash Item.

The provision of the revolving fund statute that the revolving fund, if allowed, shall be regarded as an advance for “current cash items” is a limitation on the amount of the fund the board of examiners may authorize. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

No New Fund Created.

Where a statute provides that the revolving fund may be created by the state board of examiners for any state officer, this does not operate to bring into existence any new or additional fund where the examiners allow a requisition for cash advances of the industrial accident board pursuant to the amount of appropriation made by the legislature. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

§ 67-2021. Rotary expense account — How drawn upon. — The money advanced shall remain in the state treasury for the use of the officer making the requisition. The account may be drawn upon by a sight draft signed by the officer and attached to an itemized voucher for the expenditure, both in such form as the state controller shall prescribe.

History.

1919, ch. 39, § 3, p. 138; C.S., § 245; I.C.A., § 65-2020; am. 1976, ch. 42, § 36, p. 90; am. 1994, ch. 180, § 193, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 42 of S.L. 1976, ch. 42 provided that the 1976 amendment to this section would be in full force and effect on and after July 1, 1977.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 193 was effective January 2, 1995.

CASE NOTES

Constitutionality.

Delegation of legislative power.

No new fund created.

Constitutionality.

The revolving fund statutes do not impinge on the constitutional inhibition against “a loan or credit” by the state. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

Delegation of Legislative Power.

The revolving fund statutes are not invalid as an unlawful delegation of legislative power, since they do not contemplate the making of appropriation by the board of examiners. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

No New Fund Created.

Where a statute provides that the revolving fund may be created by the state board of examiners for any state officer, this does not operate to bring into existence any new or additional fund where the examiners allow a requisition for cash advances of the industrial accident board pursuant to the amount of appropriation made by the legislature. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

§ 67-2022. Rotary expense account — Allowance of items. — At stated intervals to be fixed by the board by general regulation each officer having a revolving account shall present a complete itemized account of all expenditures therefrom for allowance or rejection. If any item thereof is disallowed, the officer shall replace the amount thereof in the revolving account. The amount of items allowed shall be credited by the state controller to the officer or replaced in the revolving account.

History.

1919, ch. 39, § 4, p. 138; C.S., § 246; I.C.A., § 65-2021; am. 1976, ch. 42, § 37, p. 90; am. 1994, ch. 180, § 194, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 42 of S.L. 1976, ch. 42 provided that the 1976 amendment to this section would be in full force and effect on and after July 1, 1977.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 194 was effective January 2, 1995.

CASE NOTES

Constitutionality.

No new fund created.

Constitutionality.

The revolving fund statutes are not invalid as an unlawful delegation of legislative power, since they do not contemplate the making of appropriation by the board of examiners. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

The revolving fund statutes do not impinge on the constitutional inhibition against “a loan or credit” by the state. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

No New Fund Created.

Where a statute provides that the revolving fund may be created by the state board of examiners for any state officer, this does not operate to bring into existence any new or additional fund where the examiners allow a requisition for cash advances of the industrial accident board pursuant to the amount of appropriation made by the legislature. *Suppiger v. Enking*, 60 Idaho 292, 91 P.2d 362 (1939).

§ 67-2023. Controller drawing warrant for disapproved claims — Liability. — In case the state controller shall draw a warrant for any claim, or part of a claim or item thereof, which is disapproved by the board, he shall be liable upon his official bond for the same if any loss shall accrue to the state therefrom.

History.

1890-1891, p. 45, § 4; reen. 1899, p. 24, § 4; reen. R.C., § 147; reen. C.L. 11:14; C.S., § 247; I.C.A., § 65-2022; am. 1994, ch. 180, § 195, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 195 was effective January 2, 1995.

CASE NOTES

[Approval of claims.](#)

[Jurisdiction of supreme court.](#)

[Approval of Claims.](#)

Claims arising out of a contract for the construction of a state wagon road, which stipulates for final payment when the contract is executed to the satisfaction of the commissioners and board of examiners, must be

submitted for approval of the board of examiners before the auditor [now state controller] can be required to issue his warrant therefor. *Winters v. Ramsey*, 4 Idaho 303, 39 P. 193 (1895).

Jurisdiction of Supreme Court.

The supreme court had authority to compel the board of examiners to examine and approve for payment claims of children's commission upon determining that they were proper as to form, certification and chargeability against the appropriation. *Jewett v. Williams*, 84 Idaho 93, 369 P.2d 590 (1962).

Cited *Padgett v. Williams*, 82 Idaho 28, 348 P.2d 944 (1960).

§ 67-2024. Board may adopt policies and procedures. — The board may adopt such policies and procedures for the conduct of its business as it may deem desirable, not inconsistent with law.

History.

1890-1891, p. 45, § 5; reen. 1899, p. 24, § 5; reen. R.C., § 148; reen. C.L. 11:15; C.S., § 248; I.C.A., § 65-2023; am. 2003, ch. 31, § 1, p. 114.

§ 67-2024A. Authorization for disposal of state surplus property. —
The state board of examiners shall authorize:

(1) The disposal of state surplus real property classified as “state administrative facilities” in accordance with [section 67-5709A, Idaho Code](#), excluding real property as set forth in [section 58-331, Idaho Code](#); and (2) The disposal of state surplus personal property in accordance with [section 67-5732A, Idaho Code](#), and in compliance with the internal management policies and procedures for state surplus personal property as adopted by the board.

History.

[I.C., § 67-2024A](#), as added by 2003, ch. 31, § 2, p. 114.

§ 67-2025. Moneys to be paid over to state treasurer at monthly intervals — Bursar of state educational institutions may act as treasurer of school organizations — Deposit of moneys — Liability of banks and officers. — Any provision of law to the contrary notwithstanding, the state board of examiners may by resolution authorize any state officer, agent or employee other than the bursars or other fiscal officers, agents or employees of state educational institutions, by whatever name such officer, agent or employee be known, receiving moneys which he is by law required to pay over to the state treasurer, to so pay over the same at such intervals not exceeding one (1) month apart as said board may by such resolution specify. The state board of education and board of regents of the University of Idaho may likewise by resolution, any provision of law to the contrary notwithstanding, authorize any bursar or other fiscal officer, agent or employee of any state educational institution, by whatever name such officer, agent or employee be known, receiving moneys which he is by law required to pay over to the state treasurer as such, or as treasurer for said board or said institution, to likewise so pay over the same at such intervals not exceeding one (1) month apart as said board may by resolution specify. The said state board of education and board of regents of the University of Idaho may also by resolution authorize such bursar or other fiscal officer, agent or employee of any state educational institution, as part of the duties of his office or employment, to act as treasurer for any organization or association of the students and/or faculty of such institution, and may authorize him to retain all moneys received or held as such treasurer, and any and all other moneys received or held by him in his official capacity or incident to the duties of his office or employment, other than those owned by the state of Idaho, to be retained by him until lawfully paid out or disposed of by him, without depositing the same with the state treasurer at all.

Any officer, bursar, agent or employee of the state or of any state educational institution so designated as herein provided, may, pending the payment of moneys so received or held by him to the state treasurer, or to the person entitled to receive the same, deposit the same, including those owned by the state and all others received or held in his official capacity or

incident to the duties of his office or employment, in a bank or trust company in the state of Idaho, to the credit of such officer, bursar, agent or employee in his official capacity, subject to the provisions of the public depository law.

No bank or trust company accepting deposits hereunder shall have any duty or obligation whatever as to the disposition of such moneys by the officer, bursar, agent or employee depositing the same, nor be liable in any respect for such officer's, bursar's, agent's or employee's misappropriation, misapplication or wrongful use or disposal thereof, nor for his failure to account for and pay over the same to the state treasurer or other person lawfully entitled thereto at the time and in the manner provided therefor, but nothing herein shall be construed as in any wise relieving the officer, bursar, agent or employee retaining or depositing moneys by authority of this act of the duty of paying the same over to the state treasurer or other person lawfully entitled thereto at the time and in the manner provided therefor, or of any other duty or liability with respect to any of such moneys, except that such officer, bursar, agent or employee shall not be liable either personally or on his official bond for the nonpayment by any bank or trust company of moneys deposited with it pursuant to the provisions of this act.

History.

1935, ch. 136, § 1, p. 330; am. 1969, ch. 255, § 5, p. 787; am. 1976, ch. 42, § 38, p. 90.

STATUTORY NOTES

Cross References.

Board of regents of university of Idaho, § 33-802.

Public depository law, § 57-101 et seq.

State board of education, § 33-101 et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term "this act" in the last paragraph refers to S.L. 1935, Chapter 136, which is compiled as this section.

Section 2 of S.L. 1935, ch. 136 repealed all acts and parts of acts in conflict insofar as the same are so in conflict.

Effective Dates.

Section 3 of S.L. 1935, ch. 136 declared an emergency. Approved March 19, 1935.

Section 7 of S.L. 1969, ch. 255 declared an emergency. Approved March 25, 1969.

Section 42 of S.L. 1976, ch. 42, reads: “An emergency existing therefore, which emergency is hereby declared to exist, sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval; sections 16, 34, 35, 36 and 37 of this act shall be in full force and effect on and after July 1, 1977. All other sections shall be in full force and effect on and after July 1, 1976.”

CASE NOTES

Cited [Milbouer v. Keppler, 644 F. Supp. 201 \(D. Idaho 1986\).](#)

§ 67-2026. Taxes, fees and other amounts to be paid by electronic funds transfer — Exception. — (1) Except as allowed in subsection (3) of this section, all taxes and additional amounts of interest, penalty or fees payable together with taxes and all other fees and amounts which are payable to the state must be paid by electronic funds transfer whenever the amount paid or payable is one hundred thousand dollars (\$100,000) or greater. Whenever the payment of taxes is required to be made by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment may be made on the first business day thereafter.

(2) All electronic funds transfers to the state, whether or not required by this section, shall be made through the automated clearing house system (ACH) operated by the federal reserve by the ACH debit or ACH credit method and shall include related addenda or messages necessary for: (a) Coordinating the filing of tax returns or other reports with the payment of taxes and all other fees and amounts by electronic funds transfer; and (b) Ensuring the proper receipt and crediting of the payment.

(3) No individual shall be required to make payment to the state by electronic funds transfer of any taxes, fees or amounts payable to the state, regardless of amount, when such taxes, fees or amounts are payable pursuant to [section 63-3024, Idaho Code](#). However, if an individual elects to make payment by electronic funds transfer of income tax or any fees and amounts associated with income tax liability, such electronic funds transfer shall adhere to the provisions for electronic funds transfer as specified in this section. For the purposes of this subsection (3), the definition of “individual” shall be as the term is defined in [section 63-3008, Idaho Code](#).

(4) The state treasurer shall adopt procedures necessary to implement the provisions of this section.

History.

[I.C., § 67-2026](#), as added by 1988, ch. 121, § 1, p. 223; am. 1993, ch. 8, § 1, p. 25; am. 1997, ch. 167, § 1, p. 479; am. 2001, ch. 100, § 1, p. 250.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-2026 which comprised S.L. 1941, ch. 127, § 1 was repealed by S.L. 1975, ch. 177, § 1.

Compiler's Notes.

For more information on ACH procedures, referred to in subsection (2), see *<https://www.nacha.org/content/ach>*.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1988, ch. 121 declared an emergency. Approved March 23, 1988.

Section 2 of S.L. 2001, ch. 100 declared an emergency retroactively to January 1, 2001 and approved March 22, 2001.

§ 67-2026A. Failure to use electronic funds transfer. — (1) Any payor required under the provisions of section 67-2026, Idaho Code, to make a payment by electronic transfer who makes the payment by check or other nonelectronic means shall be liable for an additional amount of interest. The interest shall be calculated at the annual rate of twelve per cent (12%) simple interest for the period of time between the day the payment is due and the day the funds become available to the state treasurer for investment. Unless the payor establishes a contrary time, the time between receipt of a payment by means other than electronic funds transfer and the time the funds become available to the state treasurer for investment is presumed to be five (5) days.

(2) If the agency administering the tax determines that a payor's failure to use electronic funds transfer when required is due to the payor's negligence or is the result of the payor's knowing disregard of the requirement, the agency may assert a penalty, in addition to the interest charged under subsection (1) of this section, of five hundred dollars (\$500). If the payor establishes that the failure is not due to his negligence or the result of his knowing disregard of the requirement, the agency shall abate the penalty, but it shall not abate the interest due under subsection (1) of this section.

(3) Amounts due under this section shall be asserted by the agency administering the tax in the same manner provided by law for a failure to pay taxes or fees due.

History.

I.C., § 67-2026A, as added by 1993, ch. 8, § 2, p. 25.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

§ 67-2027. Board to provide for audits. [Repealed.]

Repealed by S.L. 2013, ch. 212, § 1, effective July 1, 2013.

History.

I.C., § 67-2027, as added by 1994, ch. 181, § 39, p. 575.

STATUTORY NOTES

Prior Laws.

Former § 67-2027, which comprised S.L. 1941, ch. 127, § 2, was repealed by S.L. 1975, ch. 177, § 1.

§ 67-2028. Law enforcement death benefits. [Repealed.]

STATUTORY NOTES

Prior Laws.

A former § 67-2028, which comprised S.L. 1941, ch. 127, § 3, was repealed by S.L. 1975, ch. 177, § 1.

Compiler's Notes.

This section, which comprised I.C., § 67-2028, as added by 2001, ch. 318, § 1, p. 1130; am. 2003, ch. 238, § 2, p. 614, was repealed by S.L. 2003, ch. 238, § 3, effective July 1, 2008.

§ 67-2029 — 67-2031. Public records. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1941, ch. 127, §§ 4-6, were repealed by S.L. 1975, ch. 177, § 1. For present comparable law, see § 67-4131.

Chapter 21

OTHER OFFICERS AND BOARDS

Sec.

67-2101. General reference to other officers and boards.

§ 67-2101. General reference to other officers and boards. — The appointment or constitution, and the organization, powers and duties of such other state boards and commissions as are authorized and provided for by law, for the administration of departments of the government, or the supervision, direction and control of the educational, charitable, penal or other institutions, of the state, and the election or appointment, and the powers and duties, of officers and employees working under or in cooperation with such boards or commissions, or independently thereof in the administration of departments or branches of the state government, are provided for in this code in the titles and chapters treating of the institutions or departments of government supervised and administered by such boards, commissions, officers or employees.

History.

R.C., § 210; reen. C.L., § 210; C.S., § 249; I.C.A., § 65-2101.

Chapter 22

FISCAL YEAR

Sec.

67-2201. Fiscal year.

67-2202. Date for closing accounts.

67-2203. Period covered by annual and biennial reports.

§ 67-2201. Fiscal year. — The fiscal year of the state of Idaho shall commence on the first day of July in each year, beginning with July 1st, 1941 and close on the thirtieth day of June of the following year.

History.

1941, ch. 63, § 1, p. 123.

§ 67-2202. Date for closing accounts. — All officers, boards, departments and institutions of the state of Idaho shall keep and close all accounts and perform all duties in connection therewith, in accordance with said fiscal year, except as otherwise provided in the constitution.

History.

1941, ch. 63, § 2, p. 123.

§ 67-2203. Period covered by annual and biennial reports. — All annual or biennial reports made or required to be made by any officer, board, department or institution of the state of Idaho shall include all transactions of such offices, boards, departments or institutions to and including the thirtieth day of June, provided, the annual reports made at the close of the fiscal year ending June 30, 1941, and the biennial reports made at the close of the fiscal year ending June 30, 1942, shall cover all transactions from the ending date of the last annual or biennial reports, respectively.

History.

1941, ch. 63, § 3, p. 123.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 1941, ch. 63 repealed all acts or parts of acts in conflict therewith.

Chapter 23

MISCELLANEOUS PROVISIONS

Sec.

67-2301. Exemption from payment of fees.

67-2302. Prompt payment for goods and services.

67-2303. Display of POW/MIA flag.

67-2303A. Flags — Proper protocol.

67-2304 — 67-2307. [Repealed.]

67-2308. Conveyance of land owned by county to state when state buildings located thereon — Effect of deed.

67-2309. Written plans and specifications for work to be made by officials — Availability.

67-2310. Subcontractors to be listed on bid of general contractor — Exceptions.

67-2311. Purpose of act.

67-2312. Public buildings subject to safety inspection.

67-2313. Inspections.

67-2314. Report of inspection.

67-2315. Recommendations. [Repealed.]

67-2316. Duty of agency in control of buildings.

67-2317. Hearing and decision of disputed issues.

67-2318. Emergency expenditures.

67-2319. Purchasing products of rehabilitation facilities.

67-2320. Professional service contracts with design professionals, construction managers and professional land surveyors.

67-2321. Change of name of taxing district — Hearing — Election — Exceptions.

- 67-2322. Transfer of property by local unit of government to other government body authorized.
- 67-2323. Written agreement before transfer — Publication of notice.
- 67-2324. Two-thirds vote required for approval.
- 67-2325. Power to convey under other laws not limited.
- 67-2326. Joint action by public agencies — Purpose.
- 67-2327. Definitions.
- 67-2328. Joint exercise of powers.
- 67-2329. Agreement filed with secretary of state — Constitutionality — Enforceable in courts — Reciprocity.
- 67-2330. Approval of appropriate state officer or agency.
- 67-2331. Funds — Property — Personnel — Services.
- 67-2332. Interagency contracts.
- 67-2333. Powers of agencies not increased or diminished.
- 67-2334. “Volunteer” defined.
- 67-2335. Acceptance of volunteers — Expenses.
- 67-2336. Qualifications of volunteers.
- 67-2337. Extraterritorial authority of peace officers.
- 67-2338. Extraterritorial benefits of public officers.
- 67-2339. Mutual aid by state agencies.
- 67-2340. Regulation of auxiliary containers.
- 67-2341. Open public meetings — Definitions. [Repealed.]
- 67-2342. Governing bodies — Requirement for open public meetings. [Repealed.]
- 67-2343. Notice of meetings — Agendas. [Repealed.]
- 67-2344. Written minutes of meetings. [Repealed.]
- 67-2345. Executive sessions — When authorized. [Repealed.]

67-2345A. [Redesignated.]

67-2346. Open legislative meetings required. [Repealed.]

67-2347. Violations. [Repealed.]

67-2348. Preference for Idaho domiciled contractors on public works.

67-2349. Preference for Idaho suppliers and recycled paper products for purchases.

67-2350. Snow removal responsibilities.

67-2351. Short title.

67-2352. Definitions.

67-2353. City or county request for advice.

67-2354. Department responsibilities.

67-2355. Consideration of application — Local regulation.

67-2356 — 67-2357. [Repealed.]

67-2358. Collection of public debts — Fees.

§ 67-2301. Exemption from payment of fees. — No fees or compensation of any kind (except the regular salary or compensation paid by the state to the officer, agent, or employee individually for his services) shall be charged or received by any state board, officer, agent or employee for duties performed or services rendered to or for the state or to or for any state board, officer, agent, or employee in the performance of his or their official duties, or to or for the state or any state board, officer, agent and employee in any action or proceeding in which they or any of them are parties. No filing or recording fee shall be charged or received for duties performed or services rendered to or for the state or to or for any state board, officer, agent, employee or any subdivision of the state, to include a county, municipal corporation or district created pursuant to statute, or an officer of such subdivision in the performance of his or their official duties.

History.

1921, ch. 63, § 1, p. 121; I.C.A., § 65-2201; am. 1987, ch. 14, § 1, p. 18; am. 1998, ch. 145, § 1, p. 515.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1921, ch. 63 declared an emergency. Approved March 12, 1921.

Section 2 of S.L. 1998, ch. 145 declared an emergency. Approved March 20, 1998.

CASE NOTES

Costs.

Fees on appeal.

Personal liability of examiners and auditor.

Costs.

Judgment for costs may not be allowed against a commissioner of law enforcement or attorney general in an action against them. *City of Idaho Falls v. Pfost*, 53 Idaho 247, 23 P.2d 245 (1933).

Fees on Appeal.

Under § 1-1105, the state is required to pay the reporter's transcript fee in criminal appeals and civil appeals, and this section, which exempts the state from the payment of fees, is inapplicable. *State v. McDermott*, 111 Idaho 52, 720 P.2d 640 (1986).

Personal Liability of Examiners and Auditor.

Neither the state board of examiners nor the state auditor [now state controller] is liable for costs in actions in which either is involved in his or its official capacity. *Aero Serv. Corp. W. v. Benson*, 84 Idaho 416, 374 P.2d 277 (1962).

Cited *State ex rel. Rich v. Larson*, 84 Idaho 529, 374 P.2d 484 (1962); *Agricultural Servs., Inc. v. City of Gooding*, 120 Idaho 627, 818 P.2d 331 (Ct. App. 1991).

§ 67-2302. Prompt payment for goods and services. — (1) It is the policy of this state that all bills owed by the state of Idaho or any taxing district within the state shall be paid promptly. No state agency or taxing district supported in whole or in part by tax revenues shall be exempt from the provisions of this section, except as provided in subsection (20).

(2) All bills shall be accepted, certified for payment, and paid within sixty (60) calendar days of receipt of billing, unless the buyer and the vendor have agreed by a contract in place at the time the order was placed that a longer period of time is acceptable to the vendor. An invoice is a written account or itemized statement of merchandise shipped, sent or delivered to the purchaser with quantity, value or price, and charges set forth, and is a demand for payment of the charges set forth.

(3) Unless specifically provided by the terms of a contract that details payment requirements, including penalties for late payments, interest penalties shall be due automatically when bills become overdue. It shall be up to each vendor to calculate and invoice interest at the time payment is due on the principal.

(4) Partial payment shall be made on partial deliveries, if an invoice is submitted for a partial delivery, and the goods delivered are a usable unit. Each complete item or service must be paid for within forty-five (45) calendar days.

(5) All proper deliveries and completed services shall be received or accepted promptly and proper receiving and acceptance reports shall be forwarded to payment offices within five (5) working days of delivery of goods or completion of service.

(6) Payment shall be due on the date on which the agency officially receives the invoice or actually receives the goods or services, whichever is later.

(7) The rate of interest to be paid by the state or any taxing district shall be the rate provided in [section 63-3045, Idaho Code](#).

(8) Unpaid interest penalties owed to a vendor shall compound each month.

(9) The provisions of this section shall apply to all purchases, leases, rentals, contracts for services, construction, repairs and remodeling.

(10) No discount offered by a vendor shall be taken by the state or a taxing district or by a project manager administering a state or taxing district supported project, unless full payment is made within the discount period. In the event a discount is taken later, interest shall accrue on the unpaid balance from the day the discount offer expired.

(11) Interest shall be paid from funds already appropriated or budgeted to the offending agency or taxing district or project for that fiscal year. If more than one (1) department, institution or agency has caused a late payment, each shall bear a proportionate share of the interest penalty.

(12) In instances where an invoice is filled out incorrectly, or where there is any defect or impropriety in an invoice submitted, the state agency, taxing district, or project, shall contact the vendor in writing within ten (10) days of receiving the invoice. An error on the vendor's invoice, if corrected by the vendor within five (5) working days of being contacted by the agency or taxing district, shall not result in the vendor being paid late.

(13) Checks or warrants shall be mailed or transmitted within a reasonable time after approval.

(14) No new appropriation or budget is authorized under the provisions of this section to cover interest penalties. No state agency, taxing district, or project shall seek to increase appropriations or budgets for the purpose of obtaining funds to pay interest penalties.

(15) Payment of interest penalties may be postponed when payment on the principal is delayed because of a disagreement between the state or taxing district and the vendor. At the resolution of any dispute, vendors shall be entitled to receive interest on all proper invoices not paid for as provided in subsection (2) of this section.

(16) The provisions of this section shall in no way be construed to prohibit the state or any taxing district from making advanced payments, progress payments, or from prepaying where circumstances make such payments appropriate. All such payments shall be made promptly and are subject to interest penalties when payment is late. Where construction, repair and remodeling payments are subject to retainage, interest penalties

shall accrue on retained amounts beginning thirty (30) calendar days after work is completed by the contractor(s) unless otherwise provided by contract.

(17) Each state department, institution and agency head shall be responsible for prompt payments. In all instances where an interest payment has been made by a state agency because of a late payment, the responsible state agency head shall submit to the joint senate finance-house appropriations committee of the legislature at the time of that agency's budget request hearing an explanation of why the bill is paid late and what is being done to solve the late payment problem.

(18) Whenever a vendor brings formal administrative action or judicial action to collect interest due under this section, should the vendor prevail, the state or taxing district is required to pay any reasonable attorney fees awarded.

(19) Where the date of payment to vendors is contingent on the receipt of federal funds or federal approval, the solicitation of bids for contracts and any contracts awarded shall clearly state that payment is contingent on such conditions.

(20) The provisions of this section shall not apply to claims against a county for services rendered to any medically indigent, sick or otherwise indigent person, nor to judgment obligations.

History.

I.C., § 67-2302, as added by 1986, ch. 200, § 1, p. 499.

STATUTORY NOTES

Prior Laws.

Former § 67-2302, which comprised S.L. 1921, ch. 68, § 1, p. 131; I.C.A., § 65-2202; am. 1939, ch. 21, § 1, p. 52; am. 1943, ch. 75, § 1, p. 157, was repealed by S.L. 1974, ch. 34, § 1 and S.L. 1975, ch. 254, § 3. For present comparable law, see §§ 67-5715 to 67-5737.

Effective Dates.

Section 2 of S.L. 1986, ch. 200 read: “This act shall be in full force and effect for the state, for junior college districts and for school districts on and after July 1, 1986. This act shall be in full force and effect for all other taxing districts on and after October 1, 1986.”

§ 67-2303. Display of POW/MIA flag. — The POW/MIA flag may be displayed on any day when the United States flag is displayed and in accordance with rules as promulgated by the division of veterans services pursuant to the provisions of section 67-2303A, Idaho Code.

History.

I.C., § 67-2303, as added by 2011, ch. 209, § 1, p. 590; am. 2012, ch. 199, § 1, p. 534.

STATUTORY NOTES

Cross References.

Division of veterans services, § 65-201 et seq.

Prior Laws.

Former § 67-2303, Trade-in or exchange of state personal property, which comprised I.C.A., § 65-2202a, as added by 1939, ch. 21, § 2, p. 52, was repealed by S.L. 1974, ch. 34, § 1 and S.L. 1975, ch. 254, § 3. For present comparable law, see §§ 67-5715 to 67-5737.

Amendments.

The 2012 amendment, by ch. 199, deleted the designations from this section, deleted “or in front of the locations prescribed in subsection (2) of this section” following “may be displayed on” and substituted “and in accordance with rules as promulgated by the division of veterans services pursuant to the provisions of [section 67-2303A, Idaho Code](#)” for former subsection (2) which enumerated specific locations for flying POW/MIA flags.

Compiler’s Notes.

S.L. 2011, Chapter 209 became law without the signature of the governor, effective July 1, 2011.

§ 67-2303A. Flags — Proper protocol. — The division of veterans services is hereby authorized to promulgate rules directing the proper protocol for the location and display of flags flown on state property.

History.

I.C., § 67-2303A, as added by 2012, ch. 199, § 2, p. 534.

STATUTORY NOTES

Cross References.

Division of veterans services, § 65-201 et seq.

**§ 67-2304 — 67-2307. Construction of public buildings, works —
Sale of services, materials, blueprints. [Repealed.]**

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 1974, ch. 34, § 1: 67-2304. (S.L. 1921, ch. 97, § 1, p. 22; I.C.A., § 65-2203; am. 1949, ch. 166, § 1, p. 354; am. 1951, ch. 287, § 2, p. 617; am. 1963, ch. 313, § 1, p. 839; am. 1967, ch. 264, § 1, p. 737; am. 1970, ch. 109, § 1, p. 268; 1972, ch. 187, § 1, p. 474.

67-2304A. (I.C., § 67-2304A, as added by 1963, ch. 313, § 2, p. 839).

67-2305. (S.L. 1921, ch. 178, § 1, p. 374; I.C.A., § 65-2204).

67-2306. (I.C.A., § 65-2205, as added by S.L. 1939, ch. 139, § 1, p. 249).

67-2307. (I.C.A., § 65-2206, as added by S.L. 1939, ch. 139, § 2, p. 249).

For present comparable law, see § 67-6401 et seq.

§ 67-2308. Conveyance of land owned by county to state when state buildings located thereon — Effect of deed. — Whenever a county owns any real property upon which is located any building or buildings owned by the state of Idaho, the board of county commissioners, if they shall deem it desirable and for the general welfare and benefit of the people of the county and in the interests of the county, may convey such real property to the state of Idaho without previous notice by advertisement or otherwise and with or without compensation, whether it shall have been acquired by tax deed or otherwise. The execution and delivery of the deed so conveying such property to the state shall operate to discharge and cancel any and all previous levies, liens, taxes and special assessments made or created for the benefit of the state, county, school district or other taxing unit and to cancel all titles or claims of title including claims of redemption to such real property asserted or existing at the time of such conveyance.

History.

1945, ch. 137, § 1, p. 206.

§ 67-2309. Written plans and specifications for work to be made by officials — Availability. — All officers of the state of Idaho, the separate counties, cities, towns, villages or school districts within the state of Idaho, all boards or trustees thereof or other persons required by the statutes of the state of Idaho to advertise for bids on contracts for the construction, repair or improvement of public works, public buildings, public places or other work, shall make written plans and specifications of such work to be performed or materials furnished, and such plans and specifications shall be available for all interested and prospective bidders therefor, providing that such bidders may be required to make a reasonable deposit upon obtaining a copy of such plans and specifications; all plans and specifications for said contracts or materials shall state, among other things pertinent to the work to be performed or materials furnished, the number, size, kind and quality of materials and service required for such contract, and such plans and specifications shall not specify or provide the use of any articles of a specific brand or mark, or any patented apparatus or appliances when other materials are available for such purpose and when such requirements would prevent competitive bidding on the part of dealers or contractors in other articles or materials of equivalent value, utility or merit. The design-build method of construction may be employed by public officials in contracts for the construction, repair, or improvement of public works, public buildings, public places or other work. For purposes of this section, a design-build contract is a contract between a public entity and a nongovernmental party in which the nongovernmental party contracting with the public entity agrees to both design and build a structure, roadway or other item specified in the contract. In any action which shall arise under this section, the court may assess a civil penalty not to exceed five hundred dollars (\$500) to be paid by the public entity.

History.

1951, ch. 287, § 1, p. 617; am. 1986, ch. 293, § 1, p. 738; am. 1987, ch. 283, § 2, p. 594.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1951, ch. 287 declared an emergency. Approved March 22, 1951.

Section 3 of S.L. 1987, ch. 283 declared an emergency. Approved April 3, 1987.

CASE NOTES

Construction.

Low responsible bidder.

Construction.

This section simply requires the state to identify the number, size, kind, and quality of materials and services required for a contract sufficiently to facilitate the competitive bidding process. *SE/Z Constr., L.L.C. v. Idaho State Univ.*, 140 Idaho 8, 89 P.3d 848 (2004).

Low Responsible Bidder.

Bid documents as a whole showed that the determination of which bidder constituted the low responsible bidder would take into account the total price of the number of classroom units that the state determined it could purchase; the bid documents violated neither this section nor § 67-5711C. *SE/Z Constr., L.L.C. v. Idaho State Univ.*, 140 Idaho 8, 89 P.3d 848 (2004).

§ 67-2310. Subcontractors to be listed on bid of general contractor — Exceptions. — (1) Hereafter, before the state of Idaho, the separate counties, cities, towns, villages or school districts within the state of Idaho shall let contracts for the construction, alteration or repair of any and all buildings, improvements or public works, and such construction, alteration or repair requires plumbing, HVAC work, or electrical work, the general contractor shall be required to include in his bid the name, or names and address, or addresses, of the subcontractors who shall, in the event the contractor secures the contract, subcontract the plumbing, HVAC work, and electrical work under the general contract. In the event that the general contractor intends to self-perform the plumbing, HVAC or electrical work, the general contractor must be properly licensed by the state of Idaho to perform such work. The general contractor shall demonstrate compliance with this requirement by listing the valid contractor's license number for the plumbing, HVAC or electrical work to be self-performed by the general contractor on the bid form.

(2) No general contractor shall name any subcontractor in his bid unless the general contractor has received communication from the subcontractor. For the purposes of this section, "communication" shall include telephone, mail, facsimile machine, in person, or by computer using the internet or a bid service.

(3) In the event a general contractor secures the contract, and if the general contractor and a named subcontractor cannot finalize the terms of agreement between them for any reason other than cost, the general contractor shall name another subcontractor by written notification within ten (10) days of being awarded the public works contract. The general contractor shall disclose to the public entity the cost for work to be performed by the substitute subcontractor. If the amount of the substitute subcontractor's bid is less than the original subcontractor's bid, the reduction in cost shall be passed through to the benefit of the public entity which awarded the contract.

(4) This act shall not apply to the construction, alteration or repair of public buildings under the jurisdiction of the board of regents of the

university of Idaho.

(5) This act shall have no application to the preparation and submission of plans and specifications pursuant to statute or local ordinance.

(6) Failure to name subcontractors or list the valid contractor's license number for plumbing, HVAC or electrical work being self-performed by the general contractor as required by subsection (1) of this section shall render any bid submitted by a general contractor unresponsive and void.

(7) At the time subcontractors are named in accordance with the provisions of this section, they must possess the appropriate licenses or certificates of competency issued by the state of Idaho covering the contractor work classification in which each respective subcontractor is named. The provisions of this subsection (7) shall not apply in those cases where the public works contract is financed in whole or in part by federal aid funds, provided that, at or prior to the award and execution of any such contract by the state of Idaho or any other contracting authority mentioned in subsection (1) of this section, the successful bidder has secured a license as provided in this chapter.

History.

I.C., § 67-2310, as added by 1953, ch. 124, § 1, p. 195; am. 1963, ch. 16, § 1, p. 150; am. 1999, ch. 167, § 1, p. 454; am. 2007, ch. 127, § 3, p. 382; am. 2010, ch. 218, § 1, p. 491.

STATUTORY NOTES

Cross References.

Board of regents of university of Idaho, § 33-802.

Amendments.

The 2007 amendment, by ch. 127, in subsection (1), twice substituted "HVAC work" for "heating and air conditioning work," and added the last two sentences; and in subsection (6), inserted "or list the valid contractor's license number for plumbing, HVAC or electrical work being self-performed by the general contractor" and "by subsection (1)."

The 2010 amendment, by ch. 218, added the last sentence in subsection (7).

Compiler's Notes.

The term “hereafter” at the beginning of subsection (1) refers to the time after the effective date of S.L. 1953, Chapter 124, which was March 10, 1953.

The term “This act” in subsections (4) and (5) refers to S.L. 1953, Chapter 124, which is compiled as this section.

Effective Dates.

Section 2 of S.L. 1953, ch. 124 declared an emergency. Approved March 10, 1953.

Section 2 of S.L. 1963, ch. 16 declared an emergency. Approved February 15, 1963.

CASE NOTES

Constitutionality.

Construction.

Purpose.

Recovery of damages.

Constitutionality.

In specifying that only names of licensed electrical and mechanical subcontractors be included in the general contractor's bid, this section does not violate the equal protection laws, for the classification is reasonably related to the state's legitimate interest in protecting public health and safety which is greatly affected by skilled application of these trades. *Neilson & Co. v. Cassia & Twin Falls County Joint Class A School Dist.* 151, 96 Idaho 763, 536 P.2d 1113 (1975).

Construction.

Where a contractor's bid on a school construction contract involving an estimated cost of \$465,331 listed only a “AA” licensed subcontractor, the bid was unacceptable, because the subcontractor did not hold the specific

license “AAA” for the designated classification of operations and should have been rejected by the school board. *Neilson & Co. v. Cassia & Twin Falls County Joint Class A School Dist.* 151, 96 Idaho 763, 536 P.2d 1113 (1975).

Purpose.

The purpose of this section is to invite effective competition, prevent fraud, and secure subcontractors who are capable of satisfactorily performing the work and furnishing supplies at the lowest overall cost, and, though public works contractors are required to state their specialty subcontractors, legal contractual status is not conferred on the subcontractor so named. *Mitchell v. Siqueiros*, 99 Idaho 396, 582 P.2d 1074 (1978).

Recovery of Damages.

A school board did not have the right to waive compliance with this section and where the school board accepted a bid for construction of a junior high school which was void, since the named subcontractor’s license was inappropriate for the designated work classification, the contractor which submitted the next lowest bid was entitled to recover damages incurred in bidding the contract. *Neilson & Co. v. Cassia & Twin Falls County Joint Class A School Dist.* 151, 96 Idaho 763, 536 P.2d 1113 (1975).

Cited *Neilsen & Co. v. Cassia & Twin Falls County Joint Class A School Dist.* 151, 103 Idaho 317, 647 P.2d 773 (Ct. App. 1982); *Agricultural Servs., Inc. v. City of Gooding*, 120 Idaho 627, 818 P.2d 331 (Ct. App. 1991).

§ 67-2311. Purpose of act. — It is the purpose of this act to render all public buildings now or hereafter owned or maintained by the state of Idaho, or any official, department, board, commission or agency thereof reasonably free from hazards to the general public, to the state's employees, and to inmates in or attendants at such buildings.

History.

1959, ch. 127, § 1, p. 272.

STATUTORY NOTES

Compiler's Notes.

The term "this act" refers to S.L. 1959, Chapter 127 which is compiled as §§ 67-2311 to 67-2314 and 67-2316 to 67-2318.

CASE NOTES

Effect of local ordinance.

Scope of inspection.

Effect of Local Ordinance.

The area of state-owned buildings is completely covered by the general law and may not be subjected to an ordinance which is purely local in nature. *Caesar v. State*, 101 Idaho 158, 610 P.2d 517 (1980).

Scope of Inspection.

Since the Idaho industrial commission and the department of labor were each vested with the right of entry and inspection of all public buildings for the purpose of ascertaining unsafe conditions, this vested right would presumably contain the right to inspect for structural defects and inadequate safety conditions, including the absence of handrails in stairwells. *Caesar v. State*, 101 Idaho 158, 610 P.2d 517 (1980).

§ 67-2312. Public buildings subject to safety inspection. — The division of building safety is vested with the right of entry and inspection of all public buildings now or hereafter owned or maintained by the state or any official, department, board, commission or agency thereof, for the purpose of ascertaining unsafe or hazardous conditions therein, or in the immediate environs thereof, not only to the state's employees but to inmates therein, attendants thereat, and to the general public.

History.

1959, ch. 127, § 2, p. 272; am. 1974, ch. 39, § 90, p. 1023; am. 1996, ch. 421, § 67, p. 1406; am. 2015, ch. 110, § 1, p. 273.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Amendments.

The 2015 amendment, by ch. 110, deleted “In addition to the powers and duties with respect to matters of industrial safety now or hereafter vested in the industrial commission and the division of building safety, the commission and” from the beginning and substituted “building safety is vested” for “building safety are each vested”.

CASE NOTES

Effect of local ordinance.

Scope of inspection.

Effect of Local Ordinance.

The area of state-owned buildings is completely covered by the general law and may not be subjected to an ordinance which is purely local in nature. *Caesar v. State*, 101 Idaho 158, 610 P.2d 517 (1980).

Scope of Inspection.

Since the Idaho industrial commission and the department of labor were each vested with the right of entry and inspection of all public buildings for the purpose of ascertaining unsafe conditions, this vested right would presumably contain the right to inspect for structural defects and inadequate safety conditions, including the absence of handrails in stairwells. *Caesar v. State*, 101 Idaho 158, 610 P.2d 517 (1980).

§ 67-2313. Inspections. — At least once in each calendar year and at any time he deems necessary or desirable, and particularly when so directed by the governor, the administrator of the division of building safety shall inspect, or through designated representatives cause to be inspected, all state public buildings. Any such inspection shall include an appraisal of any and all unsafe or hazardous conditions, including industrial hazards, fire hazards, and hazards to the public particularly to inmates or patients, and attendants at such public buildings and adjoining public grounds.

History.

1959, ch. 127, § 3, p. 272; am. 1974, ch. 39, § 91, p. 1023; am. 1981, ch. 274, § 1, p. 578; am. 1996, ch. 421, § 68, p. 1406.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

CASE NOTES

Cited *Caesar v. State*, 101 Idaho 158, 610 P.2d 517 (1980).

§ 67-2314. Report of inspection. — As soon as practicable after each such inspection, the administrator of the division of building safety shall make a report in writing of the results disclosed thereby to the official, department, board, commission or agency having custody or direct control of any building so inspected. If the administrator finds hazardous conditions or unsafe practices, he shall supplement his report with recommendations for their elimination or correction.

History.

1959, ch. 127, § 4, p. 272; am. 1974, ch. 39, § 92, p. 1023; am. 1996, ch. 421, § 69, p. 1406.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

§ 67-2315. Recommendations. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1959, ch. 127, § 5, p. 272; am. 1974, ch. 39, § 93, p. 1023, was repealed by S.L. 1996, ch. 421, § 70, effective July 1, 1996.

§ 67-2316. Duty of agency in control of buildings. — The official or agency in direct control of any state public building, within twenty (20) days after receipt of such report and recommendations of the administrator of the division of building safety, shall in writing notify the division of compliance with such recommendations or correction otherwise of such hazards, or of his or its reason for failing so to do.

History.

1959, ch. 127, § 6, p. 272; am. 1974, ch. 39, § 94, p. 1023; am. 1996, ch. 421, § 71, p. 1406.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

§ 67-2317. Hearing and decision of disputed issues. — Upon the failure or refusal of the official or agency in charge of any state public building to comply with the recommendations of the administrator of the division of building safety, the administrator may hold a hearing, pursuant to the provisions for contested cases under the administrative procedure act, as provided in sections 67-5240 et seq., Idaho Code.

The administrator is empowered to conduct such hearing and render a decision. The administrator shall transmit a copy of the decision to the official or agency in direct control of the public building and to the governor.

History.

1959, ch. 127, § 7, p. 272; am. 1974, ch. 39, § 95, p. 1023; am. 1996, ch. 421, § 72, p. 1406; am. 2015, ch. 110, § 2, p. 273.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Amendments.

The 2015 amendment, by ch. 110, rewrote the section to the extent that a detailed comparison is impracticable.

§ 67-2318. Emergency expenditures. — Whenever the governor shall direct an investigation under the provisions of this act and it appears to him that the division of building safety is in emergency need of the consultant services of a specialist in fire prevention methods or in corrective structural procedures, he is authorized in his discretion to pay from the appropriation herein made, or from any other emergency or disaster relief fund available to him, the expense of such consultant services.

If it appears to the satisfaction of the governor that the official or agency in direct control of a public building is unable to comply with any recommendation or decision of the division of building safety because of lack of appropriated funds, the governor may order payment in whole or in part of expenses involved in the elimination or amelioration of hazards from the money herein appropriated or from any appropriation made available to him for emergency or disaster relief.

History.

1959, ch. 127, § 8, p. 272; am. 1974, ch. 39, § 96, p. 1023; am. 1996, ch. 421, § 73, p. 1406; am. 2015, ch. 110, § 3, p. 273.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Amendments.

The 2015 amendment, by ch. 110, inserted “or decision” near the middle of the second paragraph.

Compiler’s Notes.

The term “this act” in the first paragraph refers to S.L. 1959, Chapter 127, which is compiled as §§ 67-2311 to 67-2314 and 67-2316 to 67-2318.

The phrases “the appropriation herein made” in the first paragraph and “the money herein appropriated” appears in S.L. 1959, Chapter 127; however, the act does not contain any appropriation provisions.

Effective Dates.

Section 9 of S.L. 1959, ch. 127 declared an emergency. Approved March 12, 1959.

Section 97 of S.L. 1974, ch. 39 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-2319. Purchasing products of rehabilitation facilities. — Products which are manufactured by and services which are provided for nonprofit corporations and public agencies operating rehabilitation facilities serving people with disabilities and disadvantaged people and offered for sale at the fair market price as determined by the administrator of the division of purchasing which meet the specific requirement for such products may be procured by the state agencies or departments or any political subdivision of the state from such nonprofit corporations or public agencies without advertising or calling for bids.

History.

I.C., § 67-2319, as added by 1973, ch. 291, § 2, p. 614; am. 2010, ch. 235, § 60, p. 542.

STATUTORY NOTES

Cross References.

Administrator of division of purchasing, § 67-9204.

Prior Laws.

Former § 67-2319, which comprised S.L. 1959, ch. 181, § 1, p. 412, was repealed by S.L. 1970, ch. 38, § 9, p. 82. For present comparable law, see § 67-9201 et seq.

Amendments.

The 2010 amendment, by ch. 235, substituted “serving people with disabilities and disadvantaged people” for “serving the handicapped and disadvantaged.”

Legislative Intent.

Section 1 of S.L. 1973, ch. 291 read: “It is the intent of the legislature to encourage state agencies and departments and other political subdivisions of the state to purchase products manufactured by and services provided by nonprofit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged.”

Compiler's Notes.

The name of the state purchasing agent has been changed to administrator of the division of purchasing by the code commission on the authority of S.L. 1974, ch. 34 and S.L. 1974, ch. 286, § 1. See § 67-9201 et seq.

§ 67-2320. Professional service contracts with design professionals, construction managers and professional land surveyors. — (1) Notwithstanding any other provision of law to the contrary, it shall be the policy of this state that all public agencies and political subdivisions of the state of Idaho and their agents shall make selections for professional engineering, architectural, landscape architecture, construction management and professional land surveying services, including services by persons licensed pursuant to chapters 3, 12, 30 and 45, title 54, Idaho Code, on the basis of qualifications and demonstrated competence and shall negotiate contracts or agreements for such services on the basis of demonstrated competence and qualifications for the type of services required at fair and reasonable prices.

(2) In carrying out this policy, public agencies and political subdivisions of the state shall use the following minimum guidelines in securing contracts for engineering, architectural, landscape architecture, construction management and land surveying services on projects for which the professional service fee is anticipated to exceed the total sum of twenty-five thousand dollars (\$25,000), excluding professional services contracts previously awarded for an associated or phased project, and the expenditure is otherwise exempt from the bidding process provided by law:

- (a) Encourage persons or firms engaged in the services being solicited to submit statements of qualifications and performance data;
- (b) Establish and make available to the public the criteria and procedures used for the selection of qualified persons or firms to perform such services;
- (c) Select the persons or firms whom the public agency or political subdivision determines to be best qualified to provide the required services, ranked in order of preference, pursuant to the public agency or political subdivision's established criteria and procedures;
- (d) Negotiate with the highest ranked person or firm for a contract or agreement to perform such services at a price determined by the public agency or political subdivision to be reasonable and fair to the public

after considering the estimated value, the scope, the complexity and the nature of the services;

(e) When unable to negotiate a satisfactory contract or agreement, formally terminate negotiations and undertake negotiations with the next highest ranked person or firm, following the procedure prescribed in subsection (2)(d) of this section;

(f) When unable to negotiate a satisfactory contract or agreement with any of the selected persons or firms, continue with the selection and negotiation process provided in this section until a contract or agreement is reached;

(g) When public agencies or political subdivisions solicit proposals for engineering, architectural, landscape architecture, construction management or land surveying services for which the professional service fee is anticipated to exceed the total sum of twenty-five thousand dollars (\$25,000), they shall publish public notice in the same manner as required for bidding of public works construction projects.

(h) In fulfilling the requirements of subsections (2)(a) through (2)(g) of this section, a public agency or political subdivision may limit its selection from a list of three (3) persons or firms selected and preapproved for consideration by the public agency or political subdivision. In establishing a preapproved list a public agency or political subdivision shall publish notice as set forth in subsection (2)(g) of this section. When selecting from such list, no notice shall be required.

(i) In fulfilling the requirements of subsections (2)(a) through (2)(g) of this section, a public agency or political subdivision may request information concerning a person's or firm's rates, overhead and multipliers, if any, however such information shall not be used by the public agency or political subdivision for the purpose of ranking in order of preference as required in subsection (2)(c) of this section.

(3) In securing contracts for engineering, architectural, landscape architecture, construction management or land surveying services on projects for which the professional service fee is anticipated to be less than the total sum of twenty-five thousand dollars (\$25,000), the public agency or political subdivision may use the guidelines set forth in paragraphs (a)

through (g) of subsection (2) of this section or establish its own guidelines for selection based on demonstrated competence and qualifications to perform the type of services required, followed by negotiation of the fee at a price determined by the public agency or political subdivision to be fair and reasonable after considering the estimated value, the scope, the complexity and the nature of services.

(4) When a public agency or political subdivision of the state has previously awarded a professional services contract to a person or firm for an associated or phased project the public agency or political subdivision may, at its discretion, negotiate an extended or new professional services contract with that person or firm.

(5)(a) For the purposes of this section, “public agency” shall mean the state of Idaho and any departments, commissions, boards, authorities, bureaus, universities, colleges, educational institutions or other state agencies which have been created by or pursuant to statute other than courts and their agencies and divisions, and the judicial council and the district magistrate’s commission;

(b) For the purposes of this section, “political subdivision” shall mean a county, city, airport, airport district, school district, health district, road district, cemetery district, community college district, hospital district, irrigation district, sewer district, fire protection district, or any other district or municipality of any nature whatsoever having the power to levy taxes or assessment, organized under any general or special law of this state. The enumeration of certain districts herein shall not be construed to exclude other districts or municipalities from this definition.

History.

I.C., § 67-2320, as added by 1984, ch. 188, § 1, p. 437; am. 1998, ch. 410, § 4, p. 1267.

STATUTORY NOTES

Prior Laws.

A former § 67-2320 which comprised S.L. 1959, ch. 181, § 2 was repealed by S.L. 1970, ch. 38, § 9, p. 82.

§ 67-2321. Change of name of taxing district — Hearing — Election — Exceptions. — (1) Whenever the governing body of a taxing district, by a majority vote of its members, adopts a proposal to change the name of the district, it shall be the duty of such body to conduct at least one (1) public hearing on the proposal and to give notice of the hearing. At least fifteen (15) days prior to the hearing, notice of the time and place and a copy of the proposal of the name change shall be published in the official newspaper or paper of general circulation within the jurisdiction. The governing body may also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement.

(2) At the hearing, if it shall satisfactorily appear to the governing body that no good cause exists to deny the proposal for change of name, the governing body may adopt a resolution effecting the name change in the same form as was presented in the proposal on which the hearing was conducted. Such resolution shall also specify the date of organization of the district and its present name.

If a petition signed by ten percent (10%) of the qualified electors of the taxing district is presented in opposition to the proposed name change, the governing body of the taxing district shall submit the question to the electors of the district in accordance with the provisions of chapter 14, title 34, Idaho Code. If a majority of votes cast on the question of changing the name of the district are in favor of the name change, the governing body of the taxing district shall adopt a resolution effecting that change, specifying the date of organization of the district and its present name.

(3) No resolution for change of the name of a taxing district shall be effective until a certified copy of the resolution has been filed with the state tax commission and with the county recorder of each county in which the jurisdiction is situated.

(4) Any change of name under the provisions of this section shall not affect any of the rights, property or obligations of said taxing district.

(5) The provisions of this section shall not apply to any city, county or school district, nor to any taxing district for which provision for change of

name is otherwise provided by law.

History.

I.C., § 67-2321, as added by 1996, ch. 98, § 18, p. 308.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101.

Prior Laws.

Former § 67-2321, which comprised S.L. 1959, ch. 181, § 3, was repealed by S.L. 1970, ch. 38, § 9, p. 82. For present law, see §§ 67-2326 to 67-2333.

Effective Dates.

Section 21 of S.L. 1996, ch. 98 provided that it would be in full force and effect January 1, 1997.

§ 67-2322. Transfer of property by local unit of government to other government body authorized. — In addition to any other general or special powers vested in counties, school districts, community college districts, highway districts, fire districts, irrigation districts, drainage districts, sewer districts, hospital districts, health districts, cemetery maintenance districts and airports for the performance of their respective functions, powers or duties on an individual, cooperative, joint or contract basis, said units of the government or districts shall have the power to convey or transfer real or personal property to another such unit or to the United States, state of Idaho, any city or village with or without consideration. Such conveyance or transfer may be made without consideration or payment when it is in the best interest of the public in the judgment of the governing body of the granting unit.

History.

1967, ch. 142, § 1, p. 325; am. 1982, ch. 132, § 2, p. 379; am. 2002, ch. 49, § 4, p. 110.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1982, ch. 132 declared an emergency. Approved March 22, 1982.

Section 5 of S.L. 2002, ch. 49 declared an emergency. Approved February 27, 2002.

§ 67-2323. Written agreement before transfer — Publication of notice. — Prior to any such conveyance or transfer, a written agreement shall be made between units of government or districts for a conveyance or transfer of real or personal property from one to the other with or without consideration.

For conveyances or transfers of real or personal property with a value of ten thousand dollars (\$10,000) or less, the property may be conveyed or transferred without notice and a hearing as otherwise provided herein. For conveyances or transfers of real or personal property with a value in excess of ten thousand dollars (\$10,000), notice of the general terms of the agreement shall be given by publication in at least two (2) issues in a newspaper printed or of general circulation in the county or counties in which such respective units are located and having general circulation within such county or counties. Said notice shall give time and place of the next regular or special meeting of each respective unit at which time the governing board of such units propose to ratify such an agreement. The first publication shall be made not less than twelve (12) days prior to each meeting, and the last publication of notice shall be made not less than five (5) days prior to each meeting.

History.

1967, ch. 142, § 2, p. 325; am. 2009, ch. 278, § 1, p. 840; am. 2014, ch. 344, § 1, p. 865.

STATUTORY NOTES

Cross References.

Notice by mail, § 60-109A.

Amendments.

The 2009 amendment, by ch. 278, in the last paragraph, in the first sentence, substituted “shall be given by publication in at least two (2) issues” for “shall be published for two (2) consecutive weeks” and added the last sentence.

The 2014 amendment, by ch. 344, in the second paragraph, added the first sentence and inserted “For conveyances or transfers of real or personal property with a value in excess of ten thousand dollars (\$10,000)” at the beginning of the second sentence.

§ 67-2324. Two-thirds vote required for approval. — No agreement entered into pursuant to this act for conveyance, transfer or exchange of real or personal property between units of government or districts shall be valid unless said agreement shall be approved after notice as provided herein by a two-thirds (2/3) vote of each governing body, except no such approval shall be required from the United States or the state of Idaho.

History.

1967, ch. 142, § 3, p. 325.

STATUTORY NOTES

Compiler's Notes.

The term “this act” and the phrase “as provided herein” refer to S.L. 1967, Chapter 142, which is compiled as §§ 67-2322 to 67-2325.

§ 67-2325. Power to convey under other laws not limited. — The provisions of this act shall not restrict or limit the powers of cities and villages to convey or exchange real property as provided by sections 50-1401 et seq., Idaho Code, and related laws.

History.

1967, ch. 142, § 4, p. 325; am. 2015, ch. 244, § 48, p. 1008.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 244, substituted “sections 50-1401 et seq., Idaho Code” for “section 50-1001”.

Compiler’s Notes.

The term “this act” refers to S.L. 1967, Chapter 142, which is compiled as §§ 67-2322 to 67-2325.

§ 67-2326. Joint action by public agencies — Purpose. — It is the purpose of this act to permit the state and public agencies to make the most efficient use of their powers by enabling them to cooperate to their mutual advantage and thereby provide services and facilities and perform functions in a manner that will best accord with geographic, economic, population, and other factors influencing the needs and development of the respective entities.

History.

1970, ch. 38, § 1, p. 82.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1970, Chapter 38, which is codified as §§ 67-2326 to 67-2333.

CASE NOTES

Firefighting Services.

The contract the City of Boise made with the Idaho National Guard (IDANG) to provide Air Rescue Fire Fighting (ARFF) services at the Boise municipal airport did not violate the Idaho Constitution or the Idaho Civil Service Act; however, the firefighters were entitled to collectively bargain in anticipation of the city's actions to replace union employees with IDANG firefighters to perform the work previously performed by union members, and the requirement that the city bargain collectively with the union did not conflict with or preclude the city's exercise of joint powers with the federal government as authorized under § 67-2328 and this section. *International Ass'n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

OPINIONS OF ATTORNEY GENERAL

County Power.

The legislature has not given Idaho counties authority to produce and sell electric power. Therefore, Idaho counties lack authority to enter into an agreement with counties of other states to develop a joint water project for the production and sale of hydroelectric power. OAG 89-1.

Municipal Power.

An agreement for the joint exercise of powers between an Idaho municipality and a private entity is prohibited by Idaho law. OAG 08-02.

§ 67-2327. Definitions. — “Public agency” means any city or political subdivision of this state, including, but not limited to counties; school districts; highway districts; and port authorities; instrumentalities of counties, cities or any political subdivision created under the laws of the state of Idaho; any agency of the state government; and any city or political subdivision of another state.

“State” means a state of the United States and the District of Columbia.

History.

1970, ch. 38, § 2, p. 82; am. 1981, ch. 231, § 1, p. 469; am. 1984, ch. 72, § 2, p. 133.

OPINIONS OF ATTORNEY GENERAL

Municipal Power.

For the same reason that the a city lacks the authority to delegate its police power to a private entity, the Peace Officer Standards and Training (POST) Council does not have the authority under this section to recognize a joint exercise of powers agreement between a city and certify officers acting under that agreement. OAG 08-02.

§ 67-2328. Joint exercise of powers. — (a) Any power, privilege or authority, authorized by the Idaho Constitution, statute or charter, held by the state of Idaho or a public agency of said state, may be exercised and enjoyed jointly with the state of Idaho or any other public agency of this state having the same powers, privilege or authority; but never beyond the limitation of such powers, privileges or authority; and the state or public agency of the state, may exercise such powers, privileges and authority jointly with the United States, any other state, or public agency of any of them, to the extent that the laws of the United States or sister state, grant similar powers, privileges or authority, to the United States and its public agencies, or to the sister state and its public agencies; and provided the laws of the United States or a sister state allow such exercise of joint power, privilege or authority. The state or any public agency thereof when acting jointly with another public agency of this state may exercise and enjoy the power, privilege and authority conferred by this act; but nothing in this act shall be construed to extend the jurisdiction, power, privilege or authority of the state or public agency thereof, beyond the power, privilege or authority said state or public agency might have if acting alone.

(b) Any state or public agency may enter into agreements with one another for joint or cooperative action which includes, but is not limited to, joint use, ownership and/or operation agreements pursuant to the provisions of this act. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of these participating public agencies shall be necessary before any such agreement may enter into force.

(c) Any such agreement shall specify the following: (1) Its duration.

(2) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created.

(3) Its purpose or purposes.

(4) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor.

(5) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination.

(6) Any other necessary and proper matters.

(d) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (1), (3), (4), (5), and (6) of subsection (c) of this section, contain the following: (1) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented.

(2) The manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking.

(3) No agreement made pursuant to this act shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, said performances may be offered in satisfaction of the obligation or responsibility.

History.

1970, ch. 38, § 3, p. 82; am. 1981, ch. 231, § 2, p. 469; am. 1984, ch. 72, § 3, p. 133; am. 1992, ch. 114, § 2, p. 343.

STATUTORY NOTES

Cross References.

Joint county hospitals authorized, § 31-3512.

Legislative Intent.

Section 3 of S.L. 1994, ch. 86 provided: “It was and is hereby declared to be the intent of the Legislature that counties may enter into joint powers agreements pursuant to the provisions of Chapter 23, Title 67, Idaho Code, to provide emergency communications services on a regional or multicounty basis. Therefore, notwithstanding any provision of law or court

ruling to the contrary, all joint powers agreements between counties to provide emergency communications services on a regional or multicounty basis existing prior to the adoption of this enactment are hereby ratified, approved and affirmed.”

Compiler’s Notes.

The term “this act” in subsections (a) and (b) and in paragraph (d)(3) refers to S.L. 1970, Chapter 38, which is codified as §§ 67-2326 to 67-2333.

Effective Dates.

Section 3 of S.L. 1981, ch. 231 declared an emergency. Approved April 6, 1981.

CASE NOTES

Illegal Agreement.

District court erred in upholding the validity of a joint powers agreement (JPA) between a city and a highway district, because, while the parties were authorized to enter into the JPA to share the duties and to share the cost of carrying out those duties, the JPA illegally purported to divest the district of the duties to improve and maintain the city street system, or even to supervise those endeavors, while transferring full authority to the city to exercise full control over the city streets, along with its share of ad valorem property tax revenues. *City of Sandpoint v. Indep. Highway Dist.*, 161 Idaho 121, 384 P.3d 368 (2016).

Cited *International Ass’n of Firefighters Local No. 672 v. Boise City*, 136 Idaho 162, 30 P.3d 940 (2001).

OPINIONS OF ATTORNEY GENERAL

County Power.

Idaho counties have authority to join in an agreement with counties of Utah and Wyoming to develop a joint water project on the Bear River. Under Idaho law, however, the purposes of the water project must be limited to the irrigation or drainage of lands in the respective counties. OAG 89-1.

The legislature has not given Idaho counties authority to produce and sell electric power. Therefore, Idaho counties lack authority to enter into an agreement with counties of other states to develop a joint water project for the production and sale of hydroelectric power. OAG 89-1.

Funding Joint Projects.

The Idaho water resource board could issue revenue bonds to fund Idaho's share of a joint water project constructed by another entity without legislative approval. OAG 89-1.

The Idaho water resource board has authority to issue revenue bonds, either separately or jointly with the other compacting states, to fund Idaho's share of a joint water project on the Bear River within Idaho, Utah, or Wyoming. However, the Idaho legislature must authorize construction of the project before the Idaho water resource board may issue the revenue bonds. OAG 89-1.

§ 67-2329. Agreement filed with secretary of state — Constitutionality — Enforceable in courts — Reciprocity. — Prior to its becoming binding, any agreement made pursuant to this act between two (2) or more states or between two (2) or more public agencies of two (2) or more states shall be filed with the secretary of state, who shall require an opinion of the attorney general that such agreement does not violate the provisions of the Constitution of the United States, or the Idaho Constitution and statutes. Such opinion shall be rendered within thirty (30) days from the date of request by the secretary of state and submitted to the secretary and interested parties. Failure to render such opinion within such time shall be considered as approval by the attorney general. Upon receiving an opinion that the agreement is constitutional the secretary shall notify the agreeing parties and the agreement shall be in full force and effect from the date of such notice, provided, that such agreement shall not be enforced by the courts of this state unless the state of Idaho or public agency thereof is provided due process for enforcement in the courts of the United States or a sister state. In the event of action on any such agreement, any state or public agency joined in such action not a real party in interest, may seek damages incurred by it because of such joinder against any proper party to the action.

History.

1970, ch. 38, § 4, p. 82.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Secretary of state, § 67-901 et seq.

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1970, Chapter 38, which is codified as §§ 67-2326 to 67-2333.

§ 67-2330. Approval of appropriate state officer or agency. — In the event that an agreement made pursuant to this act shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force be submitted to the state officer or agency having such power of control and shall be approved or disapproved by him or it as to all matters within his or its jurisdiction. Failure to disapprove an agreement submitted hereunder within thirty (30) days of its submission shall constitute approval thereof.

History.

1970, ch. 38, § 5, p. 82.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1970, Chapter 38, which is codified as §§ 67-2326 to 67-2333.

§ 67-2331. Funds — Property — Personnel — Services. — Any public agency entering into an agreement pursuant to this act may appropriate funds and may sell, lease, give, or otherwise supply public property to the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking by providing such personnel or services therefor as may be within its legal power to furnish.

History.

1970, ch. 38, § 6, p. 82.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1970, Chapter 38, which is codified as §§ 67-2326 to 67-2333.

§ 67-2332. Interagency contracts. — Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform, including, but not limited to joint contracting for services, supplies and capital equipment, provided that such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives and responsibilities of the contracting parties.

History.

1970, ch. 38, § 7, p. 82.

§ 67-2333. Powers of agencies not increased or diminished. — Nothing in this act shall be interpreted to grant to any state or public agency thereof the power to increase or diminish the political or governmental power of the United States, the state of Idaho, a sister state, nor any public agency of any of them.

History.

1970, ch. 38, § 8, p. 82.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1970, Chapter 38, which is codified as §§ 67-2326 to 67-2333.

Effective Dates.

Section 10 of S.L. 1970, ch. 38 declared an emergency. Approved February 19, 1970.

§ 67-2334. “Volunteer” defined. — For the purposes of this act, “volunteer” means any person who contributes his services in a program or service conducted or sponsored by any agency, department or unit of state government for which he receives no financial remuneration, except for reasonable and necessary expenses actually incurred in the course of his participation in the program.

History.

1972, ch. 194, § 1, p. 482.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” near the beginning of the section refers to S.L. 1972, Chapter 194, which is codified as §§ 67-2334 to 67-2336.

§ 67-2335. Acceptance of volunteers — Expenses. — No law of this state prohibits any agency, department or unit of state government from accepting volunteers for any program which it conducts or sponsors. The agency, department or unit of state government sponsoring the program or service may reimburse volunteers for reasonable and necessary expenses actually incurred in the course of their participation in those programs.

History.

1972, ch. 194, § 2, p. 482.

§ 67-2336. Qualifications of volunteers. — Civil service law and requirements shall not apply to volunteers in any program conducted or sponsored by any agency, department or unit of state government. Requirements for volunteers are limited to requirements set by federal statute and to any requirements set by the agency, department or unit of state government sponsoring the program or service.

History.

1972, ch. 194, § 3, p. 482.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 1972, ch. 194 provided the act should take effect on and after July 1, 1972.

§ 67-2337. Extraterritorial authority of peace officers. — (1) As used in this section, “peace officer” shall mean a certified full-time paid employee of a police or law enforcement agency whose duties include and primarily consist of the prevention, investigation and detection of crime, and the enforcement of penal, traffic, or highway laws of this state or any political subdivision.

(2) All authority that applies to peace officers when performing their assigned functions and duties within the territorial limits of the respective city or political subdivisions, where they are employed, shall apply to them outside such territorial limits to the same degree and extent only when any one (1) of the following conditions exist: (a) A request for law enforcement assistance is made by a law enforcement agency of said jurisdiction.

(b) The peace officer possesses probable cause to believe a crime is occurring involving a felony or an immediate threat of serious bodily injury or death to any person.

(c) When a peace officer is in fresh pursuit as defined in and pursuant to chapter 7, title 19, Idaho Code.

(3) Subsection (2) of this section shall not imply that peace officers may routinely perform their law enforcement duties outside their jurisdiction in the course and scope of their employment.

(4) Cities or political subdivisions may enter into mutual assistance compacts with other cities or political subdivisions of this state or of states immediately adjacent. In the case of a mutual assistance compact between cities or political subdivisions, the original, employing agency shall be responsible for any liability arising from the acts of its employees participating in such compact. Any mutual assistance compact between a city or political subdivision of this state with a city or political subdivision of any other state shall include a written statement of assumption of liability consistent with the requirements of this section.

(5) Circumstances surrounding any actual exercise of peace officer authority outside the territorial limits of the city, county, or political subdivision of their employment shall be reported, as soon as safety

conditions allow, to the law enforcement agency having jurisdiction where the authority granted herein is exercised and the officer shall relinquish authority and control over any event to the authority having jurisdiction.

(6) The state of Idaho and its agencies or departments shall not be liable for the acts of police officers, other than its own employees, commissioned by the director of the Idaho state police, for acts done under a mutual assistance compact created under this section.

History.

[I.C., § 63-2337](#), as added by 1995, ch. 269, § 2, p. 867; am. 1996, ch. 363, § 1, p. 1219; am. 2000, ch. 469, § 134, p. 1450.

STATUTORY NOTES

Cross References.

Director of Idaho state police, § 67-2901.

Prior Laws.

Former § 67-2337, which comprised [I.C., § 67-2337](#), as added by 1973, ch. 66, § 1, p. 111; am. 1985, ch. 191, § 1, p. 490, was repealed by S.L. 1995, ch. 269, § 1, effective July 1, 1995.

CASE NOTES

[Fresh pursuit.](#)

[Remedy.](#)

Fresh Pursuit.

The only evidence necessary to show fresh pursuit is that the officer had knowledge that a crime or infraction was committed within his jurisdiction and that the officer pursued the suspect beyond the jurisdiction with the purpose of making an arrest, citing the suspect, or investigating the offense. Whether the officer's lights are flashing and siren is blaring is objective evidence of the officer's pursuit, but it is not necessary. It is well within an officer's discretion to wait for a safe point to stop a vehicle. [State v. Scott, 150 Idaho 123, 244 P.3d 622 \(Ct. App. 2010\).](#)

Remedy.

Dismissal of charge is not an appropriate remedy when an officer acts outside of his jurisdiction in obtaining evidence of a drug transaction which formed the basis of the offense charged against the defendant and led to the issuance of the arrest warrant in the case. *State v. Phelps*, 131 Idaho 249, 953 P.2d 999 (Ct. App. 1998).

Cited *State v. Dietrich*, 135 Idaho 870, 26 P.3d 53 (Ct. App. 2001).

Decisions Under Prior Law

Analysis

Arrest for driving under the influence.

Authority to arrest.

Authority to request blood-alcohol test.

Arrest for Driving Under the Influence.

Although the defendant was driving under the influence of alcohol outside of the presence of the officer, the officer was not acting extraterritorially and without authority when he arrested the defendant, because driving under the influence of alcohol is treated as a felony for purposes of arrest. *State v. Griffiths*, 113 Idaho 364, 744 P.2d 92 (1987).

Authority to Arrest.

The state presented undisputed evidence that the county sheriff appointed the officer as a special deputy sheriff and this section provides that peace officers may perform their functions and duties outside of the limits of their respective city or political subdivision at the request of the chief law enforcement officer of another city or political subdivision; therefore, because officer's assistance was requested by the county sheriff, he had authority to stop and arrest defendant outside of the city limits and, consequently, the arrest was valid. *State v. Goerig*, 121 Idaho 108, 822 P.2d 1005 (Ct. App. 1991).

Counsel was not ineffective for making a tactical decision not to pursue the issue of the extraterritorial arrest after determining the relevant statutes and researching significant case law and in determining that the arrest issue was not as pivotal as the search warrant issue even though the district court

found that the officer was acting outside his jurisdiction and did not have extraterritorial authority pursuant to any exception in the law, when executing the arrest. *Laughlin v. State*, 139 Idaho 726, 85 P.3d 1125 (Ct. App. 2003).

Authority to Request Blood-Alcohol Test.

Although the officer arrested and detained the defendant for driving under the influence of alcohol outside the territorial limits of the officer's authority, he was a person authorized to make a request to submit to a blood-alcohol test. *State v. Griffiths*, 113 Idaho 364, 744 P.2d 92 (1987).

§ 67-2338. Extraterritorial benefits of public officers. — All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, worker’s compensation insurance, and other benefits that apply to the activity of officers, agents, or employees of any city or political subdivision, when performing their respective functions within the territorial limits of their respective cities or political subdivisions, shall apply to them to the same degree and extent while engaged in the performance of any of their functions and duties extraterritorially.

History.

I.C., § 67-2338, as added by 1973, ch. 66, § 2, p. 111; am. 2015, ch. 244, § 49, p. 1008.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 244, substituted “worker’s compensation” for “workmen’s compensation”.

§ 67-2339. Mutual aid by state agencies. — State agencies may provide mutual aid, including personnel, equipment, detention facilities, including the state penitentiary and other available resources, to assist cities or political subdivisions in accordance with mutual aid agreements or at the direction of the governor.

History.

I.C., § 67-2339, as added by 1973, ch. 66, § 3, p. 111.

§ 67-2340. Regulation of auxiliary containers. — (1) As used in this section, “auxiliary container” means reusable bags, disposable bags, boxes, cups and bottles which are made of cloth, paper, plastic, extruded polystyrene or similar materials that are designed for one-time use or for transporting merchandise or food from food and retail facilities.

(2) Any regulation regarding the use, disposition or sale or any imposition of any prohibition, restriction, fee imposition or taxation of auxiliary containers at the retail, manufacturer or distributor setting shall be imposed only by statute enacted by the legislature.

(3) Nothing in this section shall be construed to prohibit or limit any county or municipal curbside recycling program or other designated residential or commercial recycling location.

(4) The provisions of subsection (2) of this section shall not apply to the use of auxiliary containers in any event organized, sponsored or permitted by a county, municipality or school district on a property owned by such county, municipality or school district.

History.

I.C., § 67-2340, as added by 2016, ch. 204, § 2, p. 574.

STATUTORY NOTES

Prior Laws.

Former § 67-2340, Formation of public policy at open meetings, which comprised S.L. 1974, ch. 187, § 1, p. 1492, was repealed by S.L. 2015, ch. 140, § 2, effective July 1, 2015. For present comparable provisions, see § 74-201.

Legislative Intent.

Section 1 of S.L. 2016, ch. 204 provided: “Legislative intent. It is the intent of the Legislature that prudent regulation of auxiliary containers is crucial to the welfare of Idaho’s economy; that retail and food establishments are sensitive to the costs and regulation of auxiliary

containers; and, that if individual political subdivisions of the state regulate such auxiliary containers, there exists the potential for confusing and varying regulations which could lead to unnecessary increased costs for retail and food establishments to comply with such regulations.”

§ 67-2341. Open public meetings — Definitions. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 2, effective July 1, 2015. For present comparable provisions, see § 74-202.

History.

1974, ch. 187, § 2, p. 1492; am. 1992, ch. 155, § 1, p. 506.

STATUTORY NOTES

Compiler's Notes.

Section 6 of S.L. 2015, ch. 140 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-2342. Governing bodies — Requirement for open public meetings. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 2, effective July 1, 2015. For present comparable provisions, see § 74-203.

History.

1974, ch. 187, § 3, p. 1492; am. 1977, ch. 173, § 1, p. 445; am. 1992, ch. 155, § 2, p. 506; am. 1998, ch. 305, § 1, p. 1006; am. 2002, ch. 290, § 1, p. 839; am. 2004, ch. 101, § 1, p. 357.

STATUTORY NOTES

Compiler's Notes.

Section 6 of S.L. 2015, ch. 140 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-2343. Notice of meetings — Agendas. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 2, effective July 1, 2015. For present comparable provisions, see § 74-204.

History.

1974, ch. 187, § 4, p. 1492; am. 1992, ch. 155, § 3, p. 506; am. 2009, ch. 161, § 1, p. 483.

STATUTORY NOTES

Compiler's Notes.

Section 6 of S.L. 2015, ch. 140 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-2344. Written minutes of meetings. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 2, effective July 1, 2015. For present comparable provisions, see § 74-205.

History.

1974, ch. 187, § 5, p. 1492; am. 1977, ch. 173, § 2, p. 445; am. 2007, ch. 174, § 1, p. 517; am. 2009, ch. 161, § 2, p. 483.

STATUTORY NOTES

Compiler's Notes.

Section 6 of S.L. 2015, ch. 140 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-2345. Executive sessions — When authorized. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 2, effective July 1, 2015. For present comparable provisions, see § 74-206.

History.

1974, ch. 187, § 6, p. 1492; am. 1976, ch. 124, § 1, p. 473; am. 1977, ch. 173, § 3, p. 445; am. 1978, ch. 302, § 1, p. 759; am. 1986, ch. 59, § 2, p. 167; am. 1990, ch. 213, § 92, p. 480; am. 1998, ch. 411, § 5, p. 1275; am. 2003, ch. 164, § 3, p. 462; am. 2007, ch. 174, § 2, p. 517; am. 2009, ch. 161, § 3, p. 483; am. 2011, ch. 311, § 26, p. 882.

STATUTORY NOTES

Compiler's Notes.

S.L. 2015, ch. 271, § 1 purported to amend this section; however S.L. 2015, ch. 140, § 2 repealed this section, effective July 1, 2015.

Section 6 of S.L. 2015, ch. 140 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-2345A. [Redesignated.]

STATUTORY NOTES

Compiler's Notes.

This section, as added by S.L. 2015, ch. 271, § 2, has been redesignated as § 74-206A, to be compiled with the open meetings law enacted by S.L. 2015, chapter 140.

§ 67-2346. Open legislative meetings required. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 2, effective July 1, 2015. For present comparable provisions, see § 74-207.

History.

1974, ch. 187, § 7, p. 1492; am. 1977, ch. 173, § 4, p. 445; am. 2006, ch. 439, § 2, p. 1326.

STATUTORY NOTES

Compiler's Notes.

Section 6 of S.L. 2015, ch. 140 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 67-2347. Violations. [Repealed.]

Repealed by S.L. 2015, ch. 140, § 2, effective July 1, 2015. For present comparable provisions, see § 74-208.

History.

I.C., § 67-2347, as added by 1977, ch. 173, § 5, p. 445; am. 1992, ch. 155, § 4, p. 506; am. 2009, ch. 161, § 4, p. 483.

STATUTORY NOTES

Compiler's Notes.

Section 6 of S.L. 2015, ch. 140 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-2348. Preference for Idaho domiciled contractors on public works. — To the extent permitted by federal laws and regulations, whenever the state of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract to a contractor for any public works, the contractor domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible contractor domiciled in Idaho as would be required for such an Idaho domiciled contractor to succeed over the bidding contractor domiciled outside Idaho on a like contract being let in his domiciliary state.

History.

I.C., § 67-2348, as added by 1982, ch. 232, § 1, p. 613.

§ 67-2349. Preference for Idaho suppliers and recycled paper products for purchases. — (1) To the extent permitted by federal laws and regulations, whenever the state of Idaho, or any department, division, bureau or agency thereof, or any city, county, school district, irrigation district, drainage district, sewer district, highway district, good road district, fire district, flood district, or other public body, shall let for bid any contract for purchase of any materials, supplies, services or equipment, the bidder domiciled outside the boundaries of Idaho shall be required, in order to be successful, to submit a bid the same percent less than the lowest bid submitted by a responsible bidder domiciled in Idaho as would be required for such an Idaho domiciled bidder to succeed over the bidder domiciled outside Idaho on a like contract being let in his domiciliary state.

For the purposes of this section, any bidder domiciled outside the boundaries of the state of Idaho may be considered as an Idaho domiciled bidder, provided that there exists for a period of one (1) year preceding the date of the bid a significant Idaho economic presence as defined herein. A significant economic presence shall consist of the following:

- (a) That the bidder maintain in Idaho fully staffed offices, or fully staffed sales offices or divisions, or fully staffed sales outlets, or manufacturing facilities, or warehouses or other necessary related property; and
- (b) If a corporation be registered and licensed to do business in the state of Idaho with the office of the secretary of state.

(2) In the evaluation of paper product bids, those items that meet recycled content standards may be given not more than a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder.

History.

I.C., § 67-2349, as added by 1985, ch. 145, § 1, p. 389; am. 1987, ch. 350, § 1, p. 779; am. 1998, ch. 148, § 1, p. 517; am. 2000, ch. 316, § 3, p. 1064.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

§ 67-2350. Snow removal responsibilities. — (1) No county, city or highway district shall be responsible for the removal of snow on roads in the county, city or highway district over which they have no jurisdiction.

(2) The county, city or highway district may keep a list of any persons or entities that are interested in providing snow removal on private roads as a source of information for the public and shall provide to interested citizens the names of those individuals on a rotating basis.

(3) Notwithstanding the limitations imposed by this section, if no private persons are available or if they refuse to provide snowplowing to interested citizens, a county, city or highway district may provide the service for which the county, city or highway district may require reimbursement.

History.

I.C., § 67-2350, as added by 1997, ch. 179, § 1, p. 497.

§ 67-2351. Short title. — This act shall be known and may be cited as the “Energy Facility Site Advisory Act.”

History.

I.C., § 67-2351, as added by 2007, ch. 164, § 1, p. 490.

STATUTORY NOTES

Prior Laws.

Former 67-2351, which comprised **I.C., § 67-2351**, as added by 1998, ch. 264, § 1, p. 873, was repealed by S.L. 2003, ch. 156, § 1, effective July 1, 2003.

Compiler’s Notes.

The term “this act” refers to S.L. 2007, Chapter 164, which is codified as §§ 67-2351 to 67-2355.

§ 67-2352. Definitions. — As used in this act, the following definitions shall apply:

(1) “Department” means any department of state government as defined in [section 67-2402, Idaho Code](#).

(2) “Energy facility” means any electrical generating facility with a rated capacity at location and at fifty-nine (59) degrees of more than fifty (50) megawatts regardless of fuel source.

History.

[I.C., § 67-2352](#), as added by 2007, ch. 164, § 1, p. 490.

STATUTORY NOTES

Prior Laws.

Former 67-2352, which comprised [I.C., § 67-2352](#), as added by 1998, ch. 264, § 1, p. 873, was repealed by S.L. 2003, ch. 156, § 1, effective July 1, 2003.

Compiler’s Notes.

The term “this act” in the introductory paragraph refers to S.L. 2007, Chapter 164, which is codified as §§ 67-2351 to 67-2355.

§ 67-2353. City or county request for advice. — (1) In the event that a city or county has before it a matter in which it considers a permit to construct and operate an energy facility that will be used for the generation of electricity, the city or county may request assistance in the evaluation of the environmental attributes and impacts of the operation of the facility from any department of state government as provided in this act. The request to a department for assistance shall specify the scope of the requested assistance, shall request a written response to the request and shall include the information provided to the city or county by the applicant that relates to the request for assistance.

(2) In addition to such other information as the ordinances of the city or county may require, a city or county may require an applicant for the construction of an energy facility to submit preliminary air emission and preliminary water consumption data concerning the proposed energy facility based on the design of the facility.

(3) If a city or county requests assistance from more than one (1) department, the city or county may designate one of the departments to coordinate the reporting by all departments pursuant to this act.

History.

I.C., § 67-2353, as added by 2007, ch. 164, § 1, p. 490.

STATUTORY NOTES

Prior Laws.

Former 67-2353, which comprised I.C., § 67-2353, as added by 1998, ch. 264, § 1, p. 873, was repealed by S.L. 2003, ch. 156, § 1, effective July 1, 2003.

Compiler's Notes.

The term “this act” in subsections (1) and (3) refers to S.L. 2007, Chapter 164, which is codified as §§ 67-2351 to 67-2355.

§ 67-2354. Department responsibilities. — (1) Upon receiving a request for assistance from a city or county, the department receiving the request shall review the information provided to the department by the city or county. The department may make such investigations as it considers necessary to respond to the request for advice. Within sixty (60) days of receiving a request for assistance, the department shall issue a written report to the city or county that made the request. If a city or county requests assistance from more than one (1) department, all departments to which a request is made shall cooperate with the department designated by the city or county to coordinate the activities of all departments in performing their reporting obligation.

(2) A department that has received a request for assistance pursuant to this act shall cause a qualified employee of the department to appear at a hearing on the application held pursuant to [section 67-2355\(3\), Idaho Code](#), upon the request of the city or county that requested the assistance.

(3) Compliance with this act shall not preempt or otherwise affect the duties of the department under state law.

History.

[I.C., § 67-2354](#), as added by 2007, ch. 164, § 1, p. 490.

STATUTORY NOTES

Prior Laws.

Former 67-2354, which comprised [I.C., § 67-2354](#), as added by 1998, ch. 264, § 1, p. 873, was repealed by S.L. 2003, ch. 156, § 1, effective July 1, 2003.

Compiler's Notes.

The term “this act” in subsections (2) and (3) refers to S.L. 2007, Chapter 164, which is codified as §§ 67-2351 to 67-2355.

§ 67-2355. Consideration of application — Local regulation. — (1)

The city or county shall consider an application for the construction of an energy facility under its existing ordinances except as otherwise provided in this section.

(2) In considering an application for the construction of an energy facility, the city or county may not consider the following factors or attributes of an energy facility because the factors are the responsibility of the public utilities commission, an electric cooperative governing board or a city council overseeing a municipal electric system:

- (a) The need for or use of the energy by the applicant or by one (1) or more electric utilities or purchasers of the energy;
- (b) The resource plan or financial characteristics of an electric utility or purchaser of the energy; or
- (c) Alternative resource options or alternative energy facility sites that were considered by the applicant or utility owner or purchaser, or that may be or were available or should have been considered for comparative purposes.

(3) The city or county shall hold at least one (1) public hearing affording the public an opportunity to comment on each proposed energy facility before the approval of the facility. Several sites may be considered at any one (1) public hearing. A representative of the state department or departments that have provided written reports shall appear at the hearing at the request of the city or county. Members of the public who are not residents of the city or county may provide comments at the hearing. The city or county, when deciding whether to approve the application, shall duly consider all comments. The city or county may approve or disapprove the application regardless of the written advice by a state department. A hearing held pursuant to the existing ordinances of the city or county that meets all of the requirements of this subsection is held in compliance with this subsection.

History.

I.C., § 67-2355, as added by 2007, ch. 164, § 1, p. 490.

STATUTORY NOTES

Cross References.

Public utilities commission, § 61-201 et seq.

Prior Laws.

Former 67-2355, which comprised **I.C., § 67-2355**, as added by 1998, ch. 264, § 1, p. 873, was repealed by S.L. 2003, ch. 156, § 1, effective July 1, 2003.

§ 67-2356, 67-2357. Electronic signature and filing act — Public agency rules — Option of agency.[Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 2003, ch. 156, § 1, effective July 1, 2003.

67-2356, which comprised I.C., § 67-2356, as added by 1998, ch. 264, § 1, p. 873.

67-2357, which comprised I.C., § 67-2357, as added by 1998, ch. 264, § 1, p. 873.

§ 67-2358. Collection of public debts — Fees. —

(1)(a) Public agencies, as defined in [section 67-2327, Idaho Code](#), may retain by written contract a collection agency that has a permit pursuant to chapter 22, title 26, Idaho Code, for the purpose of collecting public debts owed by any person, including any restitution that is being collected on behalf of a crime victim.

(b) Any public agency using a collection agency as provided in this section may add a reasonable fee, payable by the debtor, to the outstanding debt for the collection agency fee incurred or to be incurred. The amount to be paid for collection services shall be left to the agreement of the public agency and its collection agency or agencies, but in no case shall a contingent fee exceed thirty-three percent (33%) of the unpaid debt per account.

(2)(a) No debt may be assigned to a collection agency unless there has been a reasonable attempt to advise the debtor of the debt and at least thirty (30) days have elapsed from the time such notice was attempted. The public agency shall maintain a record of all attempts to notify the debtor of the existence of the debt.

(b) As used in this subsection, “reasonable attempt” means that the public agency has notified the debtor, either by mail, electronic transaction, telephone or in person, of the existence of the debt and that the public agency is attempting to collect the debt and any information obtained will be used for that purpose. At least one (1) notice sent pursuant to this subsection shall be in writing and shall state:

(i) The amount of the debt;

(ii) That unless the debtor, within thirty (30) days after receipt of notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the public agency;

(iii) That if the debtor notifies the public agency in writing within the thirty (30) day period that the debt, or any portion thereof, is disputed, the public agency will obtain verification of the debt and a copy of

such verification will be mailed to the consumer by the public agency;
and

(iv) That the public agency may employ a debt collection agency to collect a debt, which may result in additional costs to the debtor if the debtor fails to pay the debt.

(3) Collection agencies acting pursuant to this section shall have only those remedies and powers which are available to them under chapter 22, title 26, Idaho Code.

(4) For purposes of this section, the term “debt” shall include all debts, including the fee required under subsection (1)(b) of this section, except as otherwise provided by law.

History.

I.C., § 67-2358, as added by 2003, ch. 245, § 2, p. 635.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2003, ch. 245 declared an emergency. Approved April 8, 2003.

CASE NOTES

Debt Creation.

Although a mother had notice of the Idaho department of juvenile correction’s (IDJC) claim to payment for support and treatment of her son while in IDJC custody, IDJC never initiated a hearing under § 20-524 and a court never ordered the mother to pay a reasonable sum. As a result, the IDJC never validly created a debt that could be collected under this section. *Action Collection Serv. v. Black*, 163 Idaho 268, 411 P.3d 312 (Ct. App. 2017).

Chapter 24

CIVIL STATE DEPARTMENTS — ORGANIZATION

Sec.

67-2401. Gubernatorial responsibility — Administrative departments created.

67-2402. Structure of the executive branch of Idaho state government.

67-2403. Heads of departments.

67-2404. Appointment of department heads.

67-2405. Powers and duties of department heads.

67-2406. Directors of departments enumerated.

67-2407 — 67-2409. [Repealed.]

67-2410. No compensation for advisory boards.

67-2411 — 67-2417. [Repealed.]

§ 67-2401. Gubernatorial responsibility — Administrative departments created. — The supreme executive power of the state is vested by the Constitution, article 4, section 5, in the governor, who is expressly charged with the duty of seeing that the laws are faithfully executed. In order that he may exercise a portion of the authority so vested and in addition to the powers now conferred upon him by law, civil administrative departments are hereby created, through the instrumentality of which the governor is authorized to exercise the functions in this act assigned to each department, respectively.

History.

1919, ch. 8, § 1, p. 43; C.S., § 250; I.C.A., § 65-2301.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the end of the section refers to S.L. 1919, Chapter 8, which is presently compiled as §§ 42-2001, 58-121, 59-1007, 67-1001, 67-2401 to 67-2403, 67-2410, 67-2501 to 67-2504, 67-2510, 67-2511, 67-2513, 67-2701, 67-2901, 67-3301, 67-3401, 67-3404, 67-3405, 67-4203, 67-4204, 72-907, and 72-908.

CASE NOTES

Bank Mergers.

In acting on an application for a permit authorizing the merger of two banks, the amendment of the articles of incorporation of the surviving bank, and the establishing of certain branch banks, the governor of the state and his commissioner of finance were performing a duty imposed by statute. *Williams v. Koelsch*, 67 Idaho 341, 180 P.2d 237 (1947).

Cited *Abrams v. Jones*, 35 Idaho 532, 207 P. 724 (1922).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-2402. Structure of the executive branch of Idaho state government. — (1) Pursuant to section 20, article IV, Idaho constitution, all executive and administrative offices, agencies, and instrumentalities of the executive department of state, except for those assigned to the elected constitutional officers, are allocated among and within the following departments:

Department of administration

Department of agriculture

Department of commerce

Department of labor

Department of correction

Department of environmental quality Department of finance

Department of fish and game

Department of health and welfare Department of insurance

Department of juvenile corrections Idaho transportation department
Industrial commission

Department of lands

Idaho state police

Department of parks and recreation Department of revenue and taxation
Department of self-governing agencies Department of water resources

State board of education

The public school districts of Idaho, having condemnation authority, shall be considered civil departments of state government for the purpose of and limited to the purchase of state endowment land at appraised prices.

(2) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction each heads a constitutional office.

(3) For its internal structure, unless specifically provided otherwise, each department shall adhere to the following standard terms: (a) The principal unit of a department is a division. Each division shall be headed by an administrator. The administrator of any division shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(b) The principal unit of a division is a bureau. Each bureau shall be headed by a chief.

(c) The principal unit of a bureau is a section. Each section shall be headed by a supervisor.

History.

1919, ch. 8, § 2, p. 43; C.S., § 251; am. 1921, ch. 104, § 2, p. 233; I.C.A., § 65-2302; am. 1939, ch. 37, § 11, p. 74; am. 1941, ch. 82, § 1, p. 151; am. 1947, ch. 59, § 1, p. 82; am. 1947, ch. 238, § 1, p. 587; am. 1969, ch. 466, § 10, p. 1326; am. 1972, ch. 196, § 17, p. 483; am. 1974, ch. 40, § 2, p. 1072; am. 1975, ch. 164, § 13, p. 434; am. 1978, ch. 242, § 1, p. 519; am. 1985, ch. 160, § 2, p. 426; am. 1994, ch. 180, § 196, p. 420; am. 1995, ch. 44, § 59, p. 65; am. 1995, ch. 365, § 2, p. 1276; am. 1996, ch. 421, § 4, p. 1406; am. 2000, ch. 132, § 1, p. 309; am. 2000, ch. 469, § 1, p. 1450; am. 2004, ch. 346, § 9, p. 1029; am. 2007, ch. 360, § 26, p. 1061.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701.

Department of commerce and industry abolished and its duties transferred to department of finance, § 67-3402.

Department of fish and game, § 36-101.

Department of parks and recreation created, § 67-4218.

Amendments.

This section was amended by two 1995 acts — ch. 44, § 59, effective March 6, 1995 and ch. 365, § 2, effective July 1, 1995 — which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 44, § 59, added “Department of juvenile corrections” to the list of departments in subsection (1).

The 1995 amendment, by ch. 365, § 2, in subsection (3) (a) in the second sentence substituted “shall” for “may” following “the administrator of any division” and deleted “, if declared exempt by the director of the department at the time of the creation of the division” following “chapter 53, title 67, Idaho Code”.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 132, § 1, inserted “Department of environmental quality” to the list of departments following the introductory language.

The 2000 amendment, by ch. 469, § 1, substituted “Idaho state police” for “Department of law enforcement” in the list of departments following the introductory language.

The 2007 amendment, by ch. 360, in subsection (1), deleted “and labor” following “department of commerce,” and added “Department of labor.”

Compiler’s Notes.

While section 1 of S.L. 1941, ch. 82 stated that it amended § 65-2302, *Idaho Code Annotated* as amended by Chapter 37 of S.L. 1939, section 5 of S.L. 1941, ch. 82 stated that it repealed Chapter 37 of S.L. 1939.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 196 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 39 of S.L. 2000, ch. 132 provided: “This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish

necessary changes to complete the physical transition to the new department.”

CASE NOTES

Cited Weil v. Defenbach, 36 Idaho 37, 208 P. 1025 (1922); Williams v. Koelsch, 67 Idaho 341, 180 P.2d 237 (1947); Allen v. Lewis-Clark State College, 105 Idaho 447, 670 P.2d 854 (1983).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-2403. Heads of departments. — (1) Each department, unless specifically provided otherwise, shall have an officer as its executive and administrative head who shall be known as a director. The director of each department shall, subject to the provisions of law, execute the powers and discharge the duties vested by law in his department.

(2) The director of the department may appoint a deputy director. The deputy director of the department shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

History.

1919, ch. 8, § 3, p. 43; C.S., § 252; I.C.A., § 65-2303; am. 1943, ch. 58, § 1, p. 120; am. 1974, ch. 40, § 3, p. 1072; am. 1995, ch. 365, § 3, p. 1276.

CASE NOTES

[Commissioner of reclamation.](#)

[Directors.](#)

[Commissioner of Reclamation.](#)

Commissioner of reclamation (now director of department of water resources) is the proper party to bring a suit to secure from court of equity advice and direction in the administration of trust imposed by [Carey Act](#). [Carter v. Blaine County Inv. Co.](#), 45 F.2d 643 (D. Idaho 1930).

[Directors.](#)

Section 67-5303(i) (now § 67-5303(j)), concerning exemptions from the personnel act, refers to “directors” in the context of state institutions. Since, under the definition of “director” found in this section, there would be no directors in state institutions, such definition is clearly inapplicable and would be too limited a definition of the term as used in § 67-5303(i) (now § 67-5303(j)). [Allen v. Lewis-Clark State College](#), 105 Idaho 447, 670 P.2d 854 (1983).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-2404. Appointment of department heads. — (1) Unless specifically provided otherwise, the governor shall appoint all department directors. The appointment of a director is subject to the advice and consent of the senate. The governor may appoint a director to assume office prior to confirmation by the senate. The director so appointed is vested with all the rights, powers, and duties of the office upon assuming office, notwithstanding the fact that he has not been confirmed by the senate. If the senate does not confirm the appointment of a director, the governor shall make a new appointment.

(2) Unless a term of office is provided by law, each director, unless specifically provided otherwise, shall serve at the pleasure of the governor.

(3) The governor shall select each director on the basis of his professional and administrative knowledge and experience, and such other qualifications as may be provided by law.

(4) If a vacancy occurs in the office of director, the governor shall appoint a new director to serve at the pleasure of the governor.

History.

I.C., § 67-2404, as added by 1974, ch. 40, § 4, p. 1072.

STATUTORY NOTES

Prior Laws.

Former § 67-2404, which comprised S.L. 1919, ch. 8, § 4, p. 43; C.S., § 253; am. 1921, ch. 104, § 3, p. 233; I.C.A., § 65-2304; am. 1939, ch. 37, § 12, p. 74; am. 1941, ch. 82, § 2, p. 151; am. 1943, ch. 58, § 2, p. 120; am. 1947, ch. 59, § 2, p. 82; am. 1947, ch. 238, § 2, p. 587; am. 1969, ch. 466, § 11, p. 1326; am. 1972, ch. 196, § 18, p. 483 was repealed by S.L. 1974, ch. 40, § 1.

§ 67-2405. Powers and duties of department heads. — (1) Unless specifically provided otherwise, each department head shall:

- (a) Supervise, direct, account for, organize, plan, administer and execute the functions vested within the department as provided by law.
- (b) Establish policy to be followed by the department and its employees.
- (c) Compile and submit reports and budgets for the department as required by law.
- (d) Provide the governor with any information that he requests at any time on the operation of the department.
- (e) Represent the department in communications to the legislature and the governor.
- (f) Establish the internal organizational structure of the department and assign the functions of the department to subunits to promote economic and efficient administration and operation of the department. The internal structure of a department shall be established in accordance with [section 67-2402\(3\), Idaho Code](#).
- (g) Subject to law, and the provisions of the state's merit system, establish and make appointments to necessary subordinate positions, remove incompetent, ineffectual or unfit employees and abolish unnecessary positions.

(2) Each department head has authority to:

- (a) Prescribe rules consistent with law for the administration of the department, the conduct of employees, the distribution and performance of business, and the custody, use and preservation of records, documents and property pertaining to the operation of the department. The constitutional officers shall prescribe their own rules.
- (b) Subject to law, and the state merit system where applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department.

(c) Delegate any of the functions vested within the department head to subordinate employees, except the power to fix their compensation.

(d) Require that any officer or employee of the department give an official bond, if the officer or employee of the department is not required to do so by law, in the amount to be determined by the director of the department of administration.

History.

I.C., § 67-2405, as added by 1974, ch. 40, § 5, p. 1072; am. 1993, ch. 235, § 1, p. 817.

STATUTORY NOTES

Cross References.

Director of department of administration, § 67-5701.

Prior Laws.

Former § 67-2405, which comprised S.L. 1919, ch. 8, § 5, p. 43; am. 1919, ch. 129, § 1, p. 424; C.S., § 254; am. 1921, ch. 104, § 4, p. 233; am. 1921, ch. 170, § 1, p. 364; I.C.A., § 65-2305; am. 1937, ch. 114, § 1, p. 170; am. 1939, ch. 37, § 13, p. 74; am. 1941, ch. 82, § 3, p. 151; am. 1943, ch. 58, § 3, p. 120; am. 1947, ch. 59, § 3, p. 82; am. 1947, ch. 238, § 3, p. 587; am. 1971, ch. 136, § 47, p. 522, was repealed by S.L. 1974, ch. 40, § 1.

CASE NOTES

Elimination of Positions.

Where the department head was directed by law to eliminate the plaintiff's position once the position became unnecessary due to budget cuts, the plaintiff's layoff was not arbitrary, capricious or unreasonable. *Bowden v. Department of Health & Welfare*, 108 Idaho 101, 697 P.2d 441, cert. denied and appeal dismissed, 474 U.S. 805, 106 S. Ct. 39, 88 L. Ed. 2d 32 (1985).

OPINIONS OF ATTORNEY GENERAL

Idaho State Police.

The director of the department of law enforcement [Idaho state police] is the ultimate appointing authority for the director and staff of the Idaho racing commission since the commission is created within the department and has no specific authority to hire and fire employees. Therefore, the director is the appointing authority by operation of this section. OAG 90-4.

When an entity is created within a department, the director of the department is the hiring and firing authority unless provided otherwise by statute. The racing commission does not have such authority, though the director of the department of law enforcement [Idaho state police] may have in fact delegated hiring and supervisory authority to the racing commission. OAG 90-4.

The director of law enforcement [Idaho state police] is the appointing authority for the staff of the POST Academy, since the POST Council is created within the department and has no specific authority to hire and fire employees. Therefore, the director is the appointing authority by operation of this section. OAG 90-5.

§ 67-2406. Directors of departments enumerated. — The following department directors are created:

Director, department of administration Director, department of agriculture Director, department of commerce Director, department of labor

Director, department of correction Director, department of finance

Director, department of fish and game Director, department of environmental quality Director, department of health and welfare Director, department of insurance Director, department of juvenile corrections Director, Idaho transportation department Director, department of lands

Director, Idaho state police

Director, department of parks and recreation Director, department of water resources.

History.

I.C., § 67-2406, as added by 1974, ch. 40, § 6, p. 1072; am. 1985, ch. 160, § 3, p. 426; am. 1995, ch. 44, § 60, p. 65; am. 1996, ch. 421, § 5, p. 1406; am. 2000, ch. 132, § 2, p. 309; am. 2000, ch. 469, § 2, p. 1450; am. 2004, ch. 346, § 10, p. 1029; am. 2007, ch. 360, § 27, p. 1061.

STATUTORY NOTES

Prior Laws.

Former § 67-2406, which comprised S.L. 1919, ch. 8, § 6, p. 43; C.S., § 255; I.C.A., § 65-2306, was repealed by S.L. 1974, ch. 40, § 1.

Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 132, § 2, inserted “Department of environmental quality” to the list of departments following the introductory language.

The 2000 amendment, by ch. 469, § 2, substituted “Idaho state police” for “Department of law enforcement” in the list of departments following the introductory language.

The 2007 amendment, by ch. 360, deleted “and labor” following “department of commerce,” and added “Director, department of labor.”

Effective Dates.

Section 12 of S.L. 1974, ch. 40 provided that the act would be in full force and effect on and after July 1, 1974.

Section 64 of S.L. 1995, ch. 44 declared an emergency and provided that §§ 4 and 58 - 62 should be in full force and effect on and after passage and approval; approved March 6, 1995; section 65 provided that all the remaining sections of the act should be in full force and effect on and after October 1, 1995.

Section 39 of S.L. 2000, ch. 132 provided: “This act shall be in full force and effect on and after July 1, 2000, except that the Division of Environmental Quality shall have one (1) year thereafter to accomplish necessary changes to complete the physical transition to the new department.”

CASE NOTES

Cited [Allen v. Lewis-Clark State College, 105 Idaho 447, 670 P.2d 854 \(1983\).](#)

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

**§ 67-2407, 67-2408. Special qualifications required of certain officers
— Powers of agricultural advisers. [Repealed.]**

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1919, ch. 8, §§ 7, 8, p. 43; C.S., §§ 256, 257; am. 1921, ch. 195, § 1, p. 397; am. 1921, ch. 104, § 5, p. 233; I.C.A., §§ 65-2307, 65-2308; am. 1939, ch. 37, § 14, p. 74; am. 1941, ch. 82, § 4, p. 151; am. 1947, ch. 59, § 4, p. 82; am. 1947, ch. 237, § 1, p. 583; am. 1947, ch. 238, § 4, p. 587; am. 1969, ch. 466, § 12, p. 1326; am. 1972, ch. 196, § 19, p. 483 were repealed by S.L. 1974, ch. 40, § 1.

§ 67-2409. Salaries. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1919, ch. 8, § 9, p. 43; C.S., § 258; am. 1923, ch. 142, § 1, p. 295; am. 1927, ch. 188, § 7 [1], p. 251; I.C.A., § 65-2309; am. 1943, ch. 58, § 4, p. 120, was repealed by S.L. 1969, ch. 466, § 15.

§ 67-2410. No compensation for advisory boards. — No member of an advisory and nonexecutive board shall receive any compensation.

History.

1919, ch. 8, § 10, par. 1, p. 43; C.S., § 259; I.C.A., § 65-2310.

§ 67-2411, 67-2412. Time devoted to duties — Appointment, removal of officers. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1919, ch. 8, §§ 10, par. 2, 11, p. 43; C.S., §§ 260, 261; I.C.A., §§ 65-2311, 65-2312; am. 1933, ch. 132, § 1, p. 202; am. 1943, ch. 58, § 5, p. 120 were repealed by S.L. 1974, ch. 40, § 1.

§ 67-2413. Bonds, oaths of commissioners. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1919, ch. 8, § 12, p. 43; C.S., § 262; am. 1921, ch. 104, § 6, p. 233; I.C.A., § 65-2313; am. 1935, ch. 38, § 1, p. 66, was repealed by S.L. 1971, ch. 136, § 53, p. 522.

**§ 67-2414. Department of charitable institutions abolished —
Transfer of powers. [Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1947, ch. 41, § 1, p. 46, was repealed by S.L. 1974, ch. 40, § 1.

§ 67-2415. Commissioner, department of public investments abolished — Transfer of powers. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1969, ch. 466, § 14, p. 1326, was repealed by S.L. 1974, ch. 40, § 1.

§ 67-2416. Department of social and rehabilitation services substituted for department of public assistance. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1972, ch. 196, § 20, p. 483, was repealed by S.L. 1974, ch. 40, § 1.

§ 67-2417. Department of environmental and community services substituted for department of social and rehabilitation services, department of environmental protection and health, state youth training center. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1973, ch. 87, § 6, p. 137, was repealed by S.L. 1974, ch. 40, § 1.

Chapter 25

CIVIL STATE DEPARTMENTS — CONDUCT

Sec.

67-2501. Administrative rules prescribed by director.

67-2502. Offices — Branch offices.

67-2503. Seal.

67-2504. Employees.

67-2505 — 67-2507. [Repealed.]

67-2508. Compensation for public service.

67-2509. Reports. [Repealed.]

67-2510. Cooperation of departments.

67-2511. Gross receipts payable into treasury — Appropriation and warrant of controller prerequisites to expenditure of state funds.

67-2512. Requisition to make funds available. [Repealed.]

67-2513. Departments successors to abolished offices.

67-2514 — 67-2516. [Repealed.]

§ 67-2501. Administrative rules prescribed by director. — The director of each department is empowered to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employees and clerks, the distribution and performance of its business and the custody, use and preservation of the records, papers, books, documents, and property pertaining thereto.

History.

1919, ch. 8, § 13, p. 43; C.S., § 263; I.C.A., § 65-2401; am. 1974, ch. 40, § 7, p. 1072.

§ 67-2502. Offices — Branch offices. — Each department shall maintain a central office in Ada county. The director of each department may in his discretion and with the approval of the governor, establish and maintain, at other places, branch offices for the conduct of any one (1) or more functions of his department.

No department or unit of a department may share office space, facilities, equipment or personnel with any private group or association except upon written approval of the governor.

History.

1919, ch. 8, § 14, p. 43; C.S., § 264; I.C.A., § 65-2402; am. 1974, ch. 40, § 8, p. 1072; am. 2001, ch. 183, § 34, p. 613.

OPINIONS OF ATTORNEY GENERAL

Shared Facilities.

Under certain circumstances, state agencies or institutions can share facilities and personnel with private charitable organizations or foundations; however, the sharing arrangement must accomplish a public purpose and must be directly related to the function of government, and these arrangements are most likely to withstand a judicial challenge if the foundation involved exists for the benefit of the state agency and performs activities which the state agency is authorized to conduct, and if there is sufficient state control, whether contractual or otherwise, to ensure that the activities of the charitable foundation continue to meet the public purpose requirement. OAG 95-7.

Idaho Code § 67-2503

§ 67-2503. Seal. — Each department shall adopt and keep an official seal.

History.

1919, ch. 8, § 15, p. 43; C.S., § 265; I.C.A., § 65-2403.

§ 67-2504. Employees. — Subject to the provisions of chapter 53, title 67, Idaho Code, unless otherwise provided for by law, each department is empowered to employ necessary employees, and, if the rate of compensation is not otherwise fixed by law, to fix their compensation.

History.

1919, ch. 8, § 16, p. 43; C.S., § 266; I.C.A., § 65-2404; am. 1974, ch. 40, § 9, p. 1072.

STATUTORY NOTES

Cross References.

Reemployment rights after service in armed forces of United States, § 65-508.

Compiler's Notes.

Section 2 of S.L. 2013, ch. 162 provided: “Employee Compensation. The Legislature finds that investing in state employee compensation should remain a high priority even in tough economic times, and therefore strongly encourages agency directors, institution executives and the Division of Financial Management to approve the use of salary savings to provide either one-time or ongoing merit increases for deserving employees, and also target employees who are below policy compensation. Such salary savings could result from turnover and attrition, or be the result of innovation and reorganization efforts that create savings. Such savings should be reinvested in employees. Agencies are cautioned to use one-time funding for one-time payments and ongoing funding for permanent pay increases.”

§ 67-2505. Bonds of employees. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1919, ch. 8, § 17, p. 43; C.S., § 267; I.C.A., § 65-2405 was repealed by S.L. 1971, ch. 136, § 54, p. 522.

§ 67-2506. Hours for service. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1919, ch. 8, § 18, p. 43; C.S., § 268; I.C.A., § 65-2406; am. 1955, ch. 125, § 1, p. 253, was repealed by S.L. 1969, ch. 176, § 10.

§ 67-2507. Vacation leave. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1919, ch. 8, § 19, p. 43; C.S., § 269; I.C.A., § 65-2407; am. 1967, ch. 240, § 1, p. 703; am. 1972, ch. 326, § 1, p. 806, was repealed by S.L. 1974, ch. 40, § 1.

§ 67-2508. Compensation for public service. — No employee in the several departments, employed at a fixed compensation, shall be paid for any extra service performed by such employee in the ordinary course of his employment, unless expressly authorized by law.

Whenever the public interest may be served thereby, an employee of any department, with the written approval of the employing department, may be permitted to accept additional employment by the same, or another department, in any educational program conducted under the supervision of the state board of education or the board of regents of the University of Idaho, when such additional employment is not in the ordinary course of the employment of such employee and will be performed in addition to, and beyond, the hours of service required in the ordinary course of employment. The written approval of the employing department shall be filed with the secretary of the state board of examiners together with a statement that such additional employment is not in the course of the employee's employment, and will be performed in addition to the statutory hours of employment.

History.

I.C., § 67-2508, as added by 1970, ch. 77, § 1, p. 193.

STATUTORY NOTES

Cross References.

Board of regents of University of Idaho, § 33-2802.

State board of education, § 33-101 et seq.

State board of examiners, § 67-2001 et seq.

Prior Laws.

Former § 67-2508, which comprised S.L. 1919, ch. 8, § 20, p. 43; C.S., § 270; I.C.A., § 65-2408; 1969, ch. 96, § 1, p. 328, was repealed by S.L. 1969, ch. 176, § 10.

Effective Dates.

Section 2 of S.L. 1970, ch. 77 declared an emergency. Approved March 2, 1970.

§ 67-2509. Reports. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1919, ch. 8, § 21, p. 43; C.S., § 271; I.C.A., § 65-2409; am. 1974, ch. 40, § 10, p. 1072; am. 1978, ch. 17, § 2, p. 33, was repealed by S.L. 1993, ch. 330, § 1, effective July 1, 1993.

§ 67-2510. Cooperation of departments. — The governor shall devise a practical and working basis for cooperation and coordination of work, eliminating duplication and overlapping of functions. All departments shall, so far as practicable, cooperate with each other in the employment of services and the use of quarters and equipment. The director of any department may empower or require an employee of another department, subject to the consent of the superior officer of the employee, to perform any duty which he might require of his own subordinates.

Whenever in this act power is vested in a department to inspect, examine, secure data or information, or to procure assistance from another department, a duty is hereby imposed upon the department upon which demand is made, to make such power effective.

History.

1919, ch. 8, § 22, p. 43; C.S., § 272; I.C.A., § 65-2410; am. 1974, ch. 40, § 11, p. 1072.

STATUTORY NOTES

Cross References.

State board, officer or employee not to charge fee for services rendered state, state board, officer or employee, § 67-2301.

State controller, § 67-1001 et seq.

Compiler's Notes.

The term "this act" near the beginning of the second paragraph refers to S.L. 1919, Chapter 8, which is presently compiled as §§ 42-2001, 58-121, 59-1007, 67-1001, 67-2401 to 67-2403, 67-2410, 67-2501 to 67-2504, 67-2510, 67-2511, 67-2513, 67-2701, 67-2901, 67-3301, 67-3401, 67-3404, 67-3405, 67-4203, 67-4204, 72-907, and 72-908.

Effective Dates.

Section 12 of S.L. 1974, ch. 40 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-2511. Gross receipts payable into treasury — Appropriation and warrant of controller prerequisites to expenditure of state funds. — The gross amount of money received by every department, from whatever source, belonging to or for the use of the state, shall be paid into the state treasury, without delay without any deduction on account of salaries, fees, costs, charges, expenses or claim of any description whatever and shall be credited to such fund or funds as are now or may hereafter be designated by law for the deposit thereof. No money belonging to, or for the use of, the state shall be expended or applied by any department except in consequence of an appropriation made by law and upon the warrant of the state controller.

History.

1919, ch. 8, § 23, p. 43; C.S., § 273; I.C.A., § 65-2411; am. 1994, ch. 180, § 197, p. 420.

STATUTORY NOTES

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment of this section by S.L. 1994, ch. 80, § 197 was effective January 2, 1995.

§ 67-2512. Requisition to make funds available. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1919, ch. 8, § 24, p. 43; C.S., § 274; I.C.A., § 65-2412, was repealed by S.L. 1974, ch. 40, § 1.

§ 67-2513. Departments successors to abolished offices. — Whenever rights, powers and duties, which have heretofore been vested in or exercised by any officer, board, commission, institution or department, or any deputy, inspector or subordinate officer thereof, are, by this act, transferred, either in whole or in part, to or vested in a department created by this act, such rights, powers and duties shall be vested in, and shall be exercised by, the department to which the same are hereby transferred, and not otherwise, and every act done in the exercise of such rights, powers and duties shall have the same legal effect as if done by the former officer, board, commission, institution or department, or any deputy, inspector or subordinate officer thereof. Every person shall be subject to the same obligations and duties and shall have the same rights arising from the exercise of such rights, powers and duties as if such rights, powers and duties were exercised by the officer, board, commission, department or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this act. Every person shall be subject to the same penalty or penalties, civil or criminal, for failure to perform any such obligation or duty, or for doing a prohibited act, as if such obligation or duty arose from, or such act were prohibited in, the exercise of such right, power or duty by the officer, board, commission, or institution, or deputy, inspector or subordinate thereof, designated in the respective laws which are to be administered by departments created by this chapter. Every officer and employee shall, for any offense, be subject to the same penalty or penalties, civil or criminal, as are prescribed by existing law for the same offense by any officer or employee whose powers or duties devolved upon him under this act. All books, records, papers, documents, property, real and personal, unexpended appropriations, and pending business in any way pertaining to the rights, powers and duties so transferred to or vested in a department created by this act, shall be delivered and transferred to the department succeeding to such rights, powers and duties.

Whenever reports or notices are now required to be made or given, or papers or documents furnished or served by any person to or upon any officer, board, commission, or institution, or deputy, inspector or

subordinate thereof, abolished by this act, the same shall be made, given, furnished, or served in the same manner to or upon the department upon which are devolved by this act the rights, powers and duties now exercised or discharged by such officer, board, commission or institution, or deputy, inspector or subordinate thereof; and every penalty for failure so to do shall continue in effect.

This act shall not affect any act done, ratified or confirmed, or any right accrued or established, or any action or proceeding had or commenced in a civil or criminal cause before this act takes effect; but such actions or proceedings may be prosecuted and continued by the department having jurisdiction, under this act, of the subject-matter to which such litigation or proceeding pertains.

History.

1919, ch. 8, § 25, p. 43; C.S., § 275; I.C.A., § 65-2413.

STATUTORY NOTES

Compiler's Notes.

The term "this act" throughout this section refers to S.L. 1919, Chapter 8, which is presently compiled as §§ 42-2001, 58-121, 59-1007, 67-1001, 67-2401 to 67-2403, 67-2410, 67-2501 to 67-2504, 67-2510, 67-2511, 67-2513, 67-2701, 67-2901, 67-3301, 67-3401, 67-3404, 67-3405, 67-4203, 67-4204, 72-907, and 72-908.

§ 67-2514 — 67-2516. Biennial financial statement. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1923, ch. 40, §§ 1-3, p. 44; I.C.A., §§ 65-2414 to 65-2416, were repealed by S.L. 1974, ch. 40, § 1.

Chapter 26

DEPARTMENT OF SELF-GOVERNING AGENCIES

Sec.

67-2601. Department created — Organization.

67-2601A. Division of building safety.

67-2602. Division of occupational and professional licenses.

67-2602A. License fees — Military exemption.

67-2603. Division administrator — Expenses.

67-2604. Authority granted by written agreement.

67-2605. Occupational licenses account created — Disposition of fees.

67-2606. Occupational licenses account — Payment of expenses of division from — Manner.

67-2607. Occupational licenses fund — Continuing appropriation — Annual transfer of surplus. [Repealed.]

67-2608. Division administrator to cooperate with other agencies.

67-2609. Registration of occupations.

67-2610. Registration of occupations — Reexaminations.

67-2611. Issuance of licenses — Issuance of duplicate — Fee.

67-2612. Recording of licenses.

67-2613. Limited application of this chapter.

67-2614. Renewal or reinstatement of licenses.

67-2615. Reexamination and payment of certificate fees.

67-2616. Clarification of definitions.

67-2617. Payment of reexamination and certificate fees. [Repealed.]

67-2618. Attorney general to advise and represent. [Repealed.]

67-2619. Clarification of definitions. [Repealed.]

67-2620. Military education training and service — Qualifications for licensure, certification or registration. [Repealed.]

§ 67-2601. Department created — Organization. — (1) There is hereby created the department of self-governing agencies. The department shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The department shall consist of the following:

(a) Agricultural commodity commissions: Idaho apple commission, as provided by chapter 36, title 22, Idaho Code; Idaho bean commission, as provided by chapter 29, title 22, Idaho Code; Idaho beef council, as provided by chapter 29, title 25, Idaho Code; Idaho cherry commission, as provided by chapter 37, title 22, Idaho Code; Idaho dairy products commission, as provided by chapter 31, title 25, Idaho Code; Idaho pea and lentil commission, as provided by chapter 35, title 22, Idaho Code; Idaho potato commission, as provided by chapter 12, title 22, Idaho Code; the Idaho wheat commission, as provided by chapter 33, title 22, Idaho Code; and the Idaho alfalfa and clover seed commission, as provided in chapter 42, title 22, Idaho Code.

(b) Professional and occupational licensing boards: Idaho state board of accountancy, as provided by chapter 2, title 54, Idaho Code; board of acupuncture, as provided by chapter 47, title 54, Idaho Code; board of architectural examiners, as provided by chapter 3, title 54, Idaho Code; state athletic commission, as provided by chapter 4, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho state licensing board of professional counselors and marriage and family therapists, as provided by chapter 34, title 54, Idaho Code; state board of dentistry, as provided by chapter 9, title 54, Idaho Code; state board of denturistry, as provided by chapter 33, title 54, Idaho Code; Idaho board of licensure of professional engineers and professional land surveyors, as provided by chapter 12, title 54, Idaho Code; state board of registration for professional geologists, as provided by chapter 28, title 54, Idaho Code; speech and hearing services licensure board [speech, hearing and communications services licensing board], as provided by chapter 29,

title 54, Idaho Code; Idaho physical therapy licensure board, as provided by chapter 22, title 54, Idaho Code; Idaho state board of landscape architects, as provided by chapter 30, title 54, Idaho Code; liquefied petroleum gas safety board, as provided by chapter 53, title 54, Idaho Code; state board of medicine, as provided by chapter 18, title 54, Idaho Code; state board of morticians, as provided by chapter 11, title 54, Idaho Code; board of naturopathic medical examiners [naturopathic medical board], as provided by chapter 51, title 54, Idaho Code; board of nursing, as provided by chapter 14, title 54, Idaho Code; board of examiners of nursing home administrators, as provided by chapter 16, title 54, Idaho Code; state board of optometry, as provided by chapter 15, title 54, Idaho Code; Idaho outfitters and guides licensing board, as provided by chapter 21, title 36, Idaho Code; board of pharmacy, as provided by chapter 17, title 54, Idaho Code; state board of podiatry, as provided by chapter 6, title 54, Idaho Code; Idaho state board of psychologist examiners, as provided by chapter 23, title 54, Idaho Code; Idaho real estate commission, as provided by chapter 20, title 54, Idaho Code; real estate appraiser board, as provided by chapter 41, title 54, Idaho Code; board of social work examiners, as provided by chapter 32, title 54, Idaho Code; the board of veterinary medicine, as provided by chapter 21, title 54, Idaho Code; the board of examiners of residential care facility administrators, as provided by chapter 42, title 54, Idaho Code; the certified shorthand reporters board, as provided by chapter 31, title 54, Idaho Code; the driving businesses licensure board, as provided by chapter 54, title 54, Idaho Code; the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code; the board of midwifery, as provided by chapter 55, title 54, Idaho Code; and the barber and cosmetology services licensing board, as provided by chapter 58, title 54, Idaho Code.

(c) The board of examiners, pursuant to [section 67-2001, Idaho Code](#).

(d) The division of building safety: building code board, chapter 41, title 39, Idaho Code; electrical board, chapter 10, title 54, Idaho Code; public works contractors license board, chapter 19, title 54, Idaho Code; plumbing board, chapter 26, title 54, Idaho Code; public works construction management, chapter 45, title 54, Idaho Code; the heating, ventilation and air conditioning board, chapter 50, title 54, Idaho Code;

and factory built structures advisory board, chapter 43, title 39, Idaho Code.

(e) The division of veterans services to be headed by a division administrator who shall be a nonclassified employee exempt from the provisions of chapter 53, title 67, Idaho Code. The administrator of the division shall administer the provisions of chapter 2, title 65, Idaho Code, and chapter 9, title 66, Idaho Code, with the advice of the veterans affairs commission established under chapter 2, title 65, Idaho Code, and shall perform such additional duties as are imposed upon him by law.

(f) The board of library commissioners, pursuant to [section 33-2502, Idaho Code](#).

(g) The Idaho state historical society, pursuant to [section 67-4123, Idaho Code](#).

(h) The state public defense commission, pursuant to [section 19-849, Idaho Code](#).

(3) The division of occupational and professional licenses is hereby created within the department of self-governing agencies.

(4) Notwithstanding any other provision of law to the contrary, the governor shall have the authority to assign entities listed in subsection (2) of this section to divisions, sections, or units in such a manner as will tend to provide an orderly arrangement in the administrative organization of state government.

History.

[I.C., § 67-2601](#), as added by 1974, ch. 13, § 2, p. 138; am. 1976, ch. 213, § 2, p. 776; am. 1982, ch. 183, § 2, p. 480; am. 1994, ch. 15, § 1, p. 28; am. 1995, ch. 44, § 61, p. 65; am. 1996, ch. 421, § 6, p. 1406; am. 2000, ch. 59, § 8, p. 125; am. 2000, ch. 82, § 2, p. 170; am. 2000, ch. 274, § 152, p. 799; am. 2000, ch. 438, § 2, p. 1396; am. 2001, ch. 150, § 1, p. 544; am. 2002, ch. 111, § 2, p. 310; am. 2003, ch. 201, § 18, p. 529; am. 2004, ch. 313, § 7, p. 878; am. 2004, ch. 335, § 3, p. 995; am. 2004, ch. 350, § 2, p. 1042; am. 2005, ch. 143, § 2, p. 441; am. 2005, ch. 277, § 3, p. 852; am. 2005, ch. 329, § 3, p. 1026; am. 2006, ch. 16, § 26, p. 42; am. 2006, ch. 79, § 10, p. 238; am. 2006, ch. 116, § 22, p. 315; am. 2007, ch. 162, § 1, p. 485; am. 2007, ch. 252, § 15, p. 737; am. 2008, ch. 27, § 17, p. 56; am. 2009, ch. 65,

§ 2, p. 177; am. 2009, ch. 167, § 1, p. 497; am. 2009, ch. 178, § 1, p. 575; am. 2009, ch. 251, § 3, p. 765; am. 2010, ch. 79, § 36, p. 133; am. 2011, ch. 151, § 29, p. 414; am. 2011, ch. 181, § 4, p. 513; am. 2014, ch. 247, § 9, p. 617; am. 2016, ch. 342, § 12, p. 968; am. 2018, ch. 228, § 4, p. 519; am. 2020, ch. 96, § 2, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-2601, which comprised S.L. 1919, ch. 8, § 26, p. 43, subd. 41; am. 1919, ch. 48, § 1, p. 148; C.S., § 256; I.C.A., § 65-2501, was repealed by S.L. 1974, ch. 18, § 1.

Amendments.

This section was amended by four 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 59, § 8, added subdivision (2)(e) and made minor stylistic changes.

The 2000 amendment, by ch. 82, § 2, inserted “board of acupuncture, as provided by chapter 47, title 54, Idaho Code” following “Idaho state board of certified public accountancy, as provided by chapter 2, title 54, Idaho Code” in subdivision (2)(b).

The 2000 amendment, by ch. 274, § 152, substituted “residential or assisted living” for “residential care” in subdivision (2)(b).

The 2000 amendment, by ch. 438, § 2, deleted “public works contractors licensing board, as provided by chapter 19, title 54 Idaho Code” preceding “Idaho real estate commission” in subdivision (2)(b); inserted “chapter 19, title 54, Idaho Code, relating to licensing of public works contractors” preceding “chapter 26, title 54, Idaho Code, relating to plumbing and plumbers”; and made minor stylistic changes.

This section was amended by three 2004 acts that are compatible and have been compiled together.

The 2004 amendment, by ch. 313, § 7, substituted “installer licensing” for “broker licensing” in the third sentence in subsection (2)(d).

The 2004 amendment, by ch. 335, § 3, added “and the board of drinking water and wastewater professionals, as provided by chapter 24, title 54, Idaho Code” at the end of subsection (2)(b).

The 2004 amendment, by ch. 350, § 2, added “and the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code” at the end of subsection (2)(a).

This section was amended by three 2005 acts which seem to be compatible and have been compiled together.

The 2005 amendment, by ch. 143, § 2, inserted “liquefied petroleum gas safety board, as provided by chapter 51 [53], title 54, Idaho Code” near the middle of paragraph (2)(b).

The 2005 amendment, by ch. 277, § 3, substituted “speech and hearing services licensure board” for “board of hearing aid dealers and fitters” near the middle of paragraph (2)(b).

The 2005 amendment, by ch. 329, § 3, inserted “board of naturopathic medical examiners, as provided by chapter 51, title 54, Idaho Code” near the middle of paragraph (2)(b).

This section was amended by three 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 16, substituted “as provided by chapter 53” for “as provided by chapter 51” following its heading “liquefied petroleum gas safety board” in subsection (2)(b).

The 2006 amendment, by ch. 79, substituted “chapter 53, title 54” for “chapter 51, title 54” in subsection (2)(b); divided subsection (2)(d) into subsections (2)(d) to (2)(d)(ii); inserted “deputy administrators” in the introductory paragraph of subsection (2)(d); in present subsection (2)(d)(i), deleted “and recreational vehicles” following “manufactured home” and inserted “chapter 22, title 44, Idaho Code, relating to manufactured home installation; chapter 25, title 44, Idaho Code, relating to mobile home rehabilitation” and “chapter 19, title 54, Idaho Code, relating to public works contractor licensing; chapter 50, title 54, Idaho Code, relating to heating, ventilation and air conditioning systems.”

The 2006 amendment, by ch. 116, in subsection (2)(b), inserted “Idaho physical therapy licensure board, as provided by chapter 22, title 54, Idaho Code”, substituted “chapter 53, title 54” for “chapter 51, title 54”, and deleted “and its associated physical therapist advisory board, as provided by chapter 22, title 54, Idaho Code” preceding “state board of morticians.”

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 162, in subsection (2)(a), deleted “Idaho prune commission, as provided by chapter 30, title 22, Idaho Code” from the list of commissions; and rewrote subsection (2)(d), revising provisions relating to the powers and duties of the division of building safety.

The 2007 amendment, by ch. 252, inserted “the Idaho building code act; chapter 43, title 39, Idaho Code, relating to” near the beginning in subsection (2)(d)(i).

The 2008 amendment, by ch. 27, substituted “and modular buildings, chapter 43, title 39, Idaho Code” for “the Idaho building code act; chapter 43, title 39, Idaho Code, relating to” in subsection (2)(d).

This section was amended by four 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 65, added “and the board of midwifery, as provided by chapter 54, title 54, Idaho Code” at the end in subsection (2)(b).

The 2009 amendment, by ch. 167, added present subsection (2)(g).

The 2009 amendment, by ch. 178, in subsection (2)(d), substituted “manufactured housing board” for “manufactured home advisory board,” inserted “license,” and substituted “modular building advisory board” for “modular building”; and added subsection (2)(f).

The 2009 amendment, by ch. 251, near the end in subsection (2)(b), inserted “the certified shorthand reporters board, as provided by chapter 31, title 54, Idaho Code; the driving businesses licensure board, as provided by chapter 54, title 54, Idaho Code”; and, in subsection (2)(d), substituted “manufactured housing board” for “manufactured home advisory board” and inserted “license” and “advisory board.”

The 2010 amendment, by ch. 79, corrected the paragraph (2)(f) designation which was duplicated by the 2009 legislation.

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 151, substituted “Idaho board of licensure of professional engineers and professional land surveyors” for “state board of engineering examiners” near the middle in paragraph (2)(b).

The 2011 amendment, by ch. 181, added “and the Idaho alfalfa and clover seed commission, as provided in chapter 42, title 22, Idaho Code” at the end of paragraph (2)(a).

The 2014 amendment, by ch. 247, added paragraph (2)(h).

The 2016 amendment, by ch. 342, deleted “Director —” following “Organization” in the section heading; in paragraph (2)(b), deleted “certified public” preceding “accountancy” near the beginning, substituted “state athletic commission” for “office of the state athletic director”, “Idaho state licensing board of professional counselors and marriage and family therapists” for “Idaho counselor licensing board”, “state board of registration for professional geologists” for “state board for registration of professional geologists”, “board of nursing” for “board of nurses”, “Idaho outfitters and guides licensing board” for “Idaho outfitters and guides board”; and, in paragraph (2)(d), deleted “manufactured housing board, chapter 21, title 44, Idaho Code” preceding “electrical board” and substituted “factory built structures” for “modular building”.

The 2018 amendment, by ch. 228, in subsection (2), deleted “the Idaho aquaculture commission, as provided by chapter 44, title 22, Idaho Code” preceding “and the Idaho alfalfa” near the end of paragraph (a), in paragraph (b), substituted “board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code” for “board of barber examiners, as provided by chapter 5, title 54, Idaho Code; board of commissioners of the Idaho state bar, as provided by chapter 4, title 3, Idaho Code; board of chiropractic physicians, as provided by chapter 7, title 54, Idaho Code; Idaho board of cosmetology, as provided by chapter 8, title

54, Idaho Code”, and added “and the barber and cosmetology services licensing board, as provided by chapter 58, title 54, Idaho Code” at the end.

The 2020 amendment, by ch. 96, deleted “Bureau of occupational licenses created” from the end of the section heading; substituted “division of occupational and professional licenses” for “bureau of occupational licenses” at the beginning of subsection (3); and added subsection (4).

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Compiler’s Notes.

The first bracketed insertion in paragraph (2)(b) was added by the compiler to correct the name of the referenced agency. See § 54-2908.

The second bracketed insertion in paragraph (2)(b) was added by the compiler to correct the name of the referenced agency. See § 54-5105.

Effective Dates.

Section 64 of S.L. 1995, ch. 44 declared an emergency and provided that §§ 4 and 58 - 62 should be in full force and effect on and after passage and approval; approved March 6, 1995; section 65 provided that all the remaining sections of the act should be in full force and effect on and after October 1, 1995.

Section 4 of S.L. 2002, ch. 111 declared an emergency. Approved March 19, 2002.

Section 4 of S.L. 2004, ch. 335 declared an emergency. Approved March 24, 2004.

Section 10 of S.L. 2014, ch. 247 declared an emergency. Approved March 26, 2014.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

OPINIONS OF ATTORNEY GENERAL

Board and Commission Makeup.

North Carolina Dental Exam'rs v. F.T.C., 574 U.S.494, 135 S. Ct. 1101, 191 L. Ed.2d 35 (2015), has forced states to evaluate anew their various board and commission makeup and oversight, to the degree they wish for state action immunity to continue to apply to the actions and decisions of such boards and commissions. Specifically, the case requires states to consider the makeup of those boards and commissions that are controlled by market participants and how to actively supervise them. Active state supervision will be satisfied when a non-market-participant state official has and exercises power to substantively review such entities' decisions and determine whether the action at issue effectuates the state's regulatory policies. OAG 2016-1.

§ 67-2601A. Division of building safety. — (1) The division of building safety will be headed by an administrator appointed by and serving at the will of the governor. The division administrator, deputy administrators and regional managers shall be nonclassified employees exempt from the provisions of chapter 53, title 67, Idaho Code.

(2) The administrator shall administer the following provisions and shall perform such additional duties as are imposed on him by law: chapter 41, title 39, Idaho Code, relating to the building code board; chapter 40, title 39, Idaho Code, relating to manufactured homes; chapter 43, title 39, Idaho Code, relating to factory built structures; chapter 21, title 44, Idaho Code, relating to manufactured home dealer and installer licensing; chapter 25, title 44, Idaho Code, relating to mobile home rehabilitation; chapter 10, title 54, Idaho Code, relating to electrical contractors and journeymen; chapter 19, title 54, Idaho Code, relating to licensing of public works contractors; chapter 26, title 54, Idaho Code, relating to plumbing and plumbers; chapter 45, title 54, Idaho Code, relating to public works construction management licensing; chapter 50, title 54, Idaho Code, relating to heating, ventilation and air conditioning systems; chapter 80, title 39, Idaho Code, relating to school building safety; chapter 59, title 33, Idaho Code, relating to Idaho school safety and security; chapter 86, title 39, Idaho Code, relating to elevator safety; and chapter 22, title 55, Idaho Code, relating to underground facilities damage prevention.

(3) The administrator shall also have the authority to perform safety inspections and safety training programs for logging operations in Idaho.

(a) When an inspection reveals evidence of a condition that poses an immediate threat of serious bodily harm or loss of life to any person, the administrator and, while on public highways, the director of the Idaho state police and the Idaho transportation board, may issue an order to immediately stop the work, close the facility or site, or detain the vehicle where the threat exists. The safety order shall not be rescinded until after the threat has been corrected or removed.

(b) The safety order may be enforced by the attorney general in a civil action brought in the district court for the county wherein the hazardous

work site or facility is located or the vehicle is detained.

(c) Any person who knowingly fails or refuses to comply with such an order is guilty of a misdemeanor.

(d) The administrator shall promulgate rules adopting minimum logging safety standards and procedures for conducting inspections and safety training.

(e) The director of the Idaho state police and the Idaho transportation board shall have authority on public highways to stop and inspect vehicles and enforce rules promulgated by the administrator pursuant to this section.

(4) In addition to safety inspections of state-owned public buildings conducted under chapter 23, title 67, Idaho Code, the administrator may conduct safety inspections of buildings owned or maintained by political subdivisions of the state upon receipt of a written request from the governing body of that political subdivision, subject to the availability of division resources and the requesting entity's agreement to pay the division's current fees for such an inspection.

(a) The findings of the inspection shall be reported to the governing body of the political subdivision.

(b) The administrator may promulgate rules adopting minimum safety standards and procedures for conducting such inspections, as well as fees for performing the same.

(c) For purposes of this section, "political subdivision" means any governmental unit or special district of the state of Idaho other than public school districts.

(5) In administering the laws regulating professions, trades and occupations that are devolved for administration upon the division, and in addition to the authority granted to the administrator by the laws and rules of the agencies and entities within the division, the administrator may:

(a) Revise the operating structure of the division as needed to provide efficient and appropriate services to the various professions, trades, occupations and programs administered within the division;

(b) Conduct examinations to ascertain the qualifications and fitness of applicants to exercise the profession, trade or occupation for which an examination is held; pass upon the qualifications of applicants for reciprocal licenses, certificates and authorities; prescribe rules for a fair and impartial method of examination of candidates to exercise the respective professions, trades or occupations; issue registrations, licenses and certificates; and until fees are established in rule, the administrator shall charge a fee of seventy-five dollars (\$75.00) for each examination administered;

(c) Conduct hearings on proceedings to discipline, renew or reinstate licenses, certificates or authorities of persons exercising the respective professions, trades or occupations; appoint hearing officers, administer oaths, issue subpoenas, and compel the attendance of witnesses; revoke, suspend, refuse to renew, or take other disciplinary action against such licenses, certifications or authorities; and prescribe rules to assess costs and fees incurred in the investigation and prosecution or defense of any certificate holder, licensee or registrant of the division, its boards, bureaus and programs, in accordance with the provisions of [section 12-117\(5\), Idaho Code](#), when applicable, the contested case provisions of chapter 52, title 67, Idaho Code, and the laws and rules of the boards, bureaus and programs the division administers;

(d) Assess civil penalties as authorized;

(e) Promulgate rules establishing: a coordinated system for the issuance, renewal, cancellation and reinstatement of licenses, certificates, registrations and permits; assessment of all related fees; the terms by which fees may be prorated, if any; and procedures for the replacement of lost or destroyed licenses, certificates or registrations; and

(f) Promulgate other rules as may be necessary for the orderly administration of the chapters specified in subsection (2) of this section, except for those related to underground facilities damage prevention contained in chapter 22, title 55, Idaho Code, and such rules as may otherwise be required by those chapters as well as rules for the standardization of operating procedures.

(6) Notwithstanding any law governing any specific board, bureau or program comprising the division of building safety, each board member

shall hold office until a successor has been duly appointed and qualified.

(7) The administrator shall have the authority to employ individuals, make expenditures, enter into contracts, require reports, make investigations, travel, and take other actions deemed necessary.

History.

I.C., § 67-2601A, as added by 2007, ch. 162, § 2, p. 485; am. 2010, ch. 165, § 1, p. 338; am. 2012, ch. 28, § 2, p. 85; am. 2015, ch. 110, § 4, p. 273; am. 2015, ch. 244, § 50, p. 1008; am. 2016, ch. 47, § 42, p. 98; am. 2016, ch. 192, § 2, p. 534; am. 2016, ch. 325, § 13, p. 894; am. 2016, ch. 342, § 13, p. 968; am. 2018, ch. 348, § 23, p. 795; am. 2019, ch. 64, § 1, p. 153.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Punishment for misdemeanor when not otherwise provided, § 18-113.

Amendments.

The 2010 amendment, by ch. 165, added “and until fees are established in rule, the administrator shall charge a fee of seventy-five dollars (\$75.00) for each examination administered” at the end of in paragraph (4)(b).

The 2012 amendment, by ch. 28, substituted “regional managers” for “bureau chiefs” in the second sentence in subsection (1).

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 110, substituted “chapter 43, title 39” for “chapter 41, title 39” in subsection (2); rewrote subsection (3), which formerly read: “The administrator shall cooperate with the industrial commission and aid and assist the commission in its administration of sections 72-720, 72-721 and 72-723, Idaho Code, and at the request of the commission shall make inspection of appliances, tools, equipment, machinery, practices or conditions, and shall make a written report to the commission. The administrator shall make recommendations to the commission to aid the commission in its administration of sections 72-720,

72-721 and 72-723, Idaho Code, provided however, that nothing herein shall be construed as transferring to the administrator any of the authority or powers now vested in the industrial commission”; added subsection (4); and redesignated the remaining subsections accordingly.

The 2015 amendment, by ch. 244, substituted “chapter 43, title 39, Idaho Code” for “chapter 41, title 39, Idaho Code” in subsection (2).

The section was amended by four 2016 acts which appeared to be compatible and have been compiled together.

The 2016 amendment, by ch. 47, substituted “chapter 41, title 39” for “chapter 43, title 39” near the beginning of subsection (2).

The 2016 amendment, by ch. 192, inserted “chapter 58, title 33, Idaho Code, relating to Idaho school safety and security” near the end of subsection (2).

The 2016 amendment, by ch. 325, added “and chapter 22, title 55, Idaho Code, relating to underground facilities damage prevention” at the end of subsection (2) and inserted “except for those related to underground facilities damage prevention contained in chapter 22, title 55, Idaho Code” in paragraph (5)(f).

The 2016 amendment, by ch. 342, substituted “factory built structures” for “modular buildings” near the beginning of subsection (2).

The 2018 amendment, by ch. 348, in paragraph (5)(c), substituted “assess costs and fees incurred in the investigation and prosecution or defense” for “recover costs and fees incurred in the investigation and prosecution” near the middle and inserted “the provisions of [section 12-117\(5\), Idaho Code](#), when applicable” near the end.

The 2019 amendment, by ch. 64, in subsection (3), paragraph (a), inserted “and, while on public highways, the director of the Idaho state police and the Idaho transportation board” near the beginning and substituted “close the facility or site, or detain the vehicle” for “or close the facility or site” near the end of the first sentence, added “or the vehicle is detained” at the end of paragraph (b), and added paragraph (e).

Compiler’s Notes.

S.L. 2018, Chapter 348 became law without the signature of the governor.

CASE NOTES

Decisions Under Prior Law

Claim not barred.

Duty of inspection.

Logging code.

Persons not employees.

Claim Not Barred.

There was substantial competent evidence to support the industrial commission's finding that prior to the expiration of the five-year time period for filing an application for a workers' compensation hearing, the claimant and the employer, as well as the claimant and the employer's heirs, became engaged in consultations and negotiations concerning a claim, that these negotiations may have possibly led claimant to believe that no decision had been made by the employer and therefore it was not necessary to file an application for hearing, and that claimant's claim was not time barred. *Swenson v. Estate of Craner*, 117 Idaho 57, 785 P.2d 621 (1990).

Duty of Inspection.

Refusal of the board to make requested investigation of the working conditions in claimant's place of employment was not error where the record showed a periodic examination of the premises by a health engineer in Idaho's department of public health over some 10 years prior to the occurrence of claimant's affliction and that no other workman in the area where claimant worked suffered any affliction of his teeth or gums as claimed by claimant. *Comish v. J. R. Simplot Fertilizer Co.*, 86 Idaho 79, 383 P.2d 333 (1963).

Logging Code.

The Logging Code is designed, (1) to insure adequate safety at any place of any employment; and (2) to protect the life and safety of employees. *Ek*

v. Herrington, 738 F. Supp. 357 (D. Idaho 1990), aff'd, 939 F.2d 839 (9th Cir. 1991).

Persons Not Employees.

Where a supervising architect for a school district was injured while making an inspection of the work, he was not an employee of the contractor and, therefore, not covered by the Workmen's [Worker's] Compensation Law defining a workman and by its provisions for the adoption of minimum safety standards for the protection of employee workmen. *Pehrson v. C.B. Lauch Constr. Co.*, 237 F.2d 269 (9th Cir. 1956).

§ 67-2602. Division of occupational and professional licenses. — (1) The division of occupational and professional licenses created in the department of self-governing agencies by section 67-2601, Idaho Code, shall be empowered by written agreement between the division and each agency for which it provides administrative or other services as provided by law to provide such services. The division may charge a reasonable fee for such services provided on behalf of and for any agency not otherwise provided for by law and shall maintain proper accounting methods for all funds under its jurisdiction.

(2) Notwithstanding the statutes governing specific boards, for any board that contracts with the division of occupational and professional licenses, each board member shall hold office until a successor has been duly appointed and qualified.

(3) For the purposes of proceedings authorized by law and held before any agency that the division serves, including the revocation or suspension of licenses, registrations, permits, or certifications, or the imposition of fines or other discipline on persons holding such licenses, registrations, permits, or certification notwithstanding any other provision of law, the division may administer oaths, take depositions of witnesses within or without the state in the manner provided by the administrative rules adopted by the division, and shall have power throughout the state of Idaho to issue subpoenas and compel the attendance of witnesses.

(4) Agencies that contract with the division of occupational and professional licenses for administrative services may assess and the division may collect costs, fees, and attorney's fees reasonably incurred in the investigation and prosecution or defense of a licensee or registrant, pursuant to the provisions of [section 12-117\(5\), Idaho Code](#).

History.

[I.C., § 67-2602](#), as added by 2020, ch. 96, § 4, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-2602, which comprised I.C., § 67-2602, as added by 1974, ch. 13, § 2, p. 138; am. 1982, ch. 183, § 3, p. 480; am. 1983, ch. 139, § 20, p. 336; am. 1994, ch. 15, § 2, p. 28; am. 1999, ch. 163, § 1, p. 450; am. 2000, ch. 82, § 3, p. 170; am. 2000, ch. 274, § 153, p. 799; am. 2001, ch. 202, § 2, p. 681; am. 2002, ch. 111, § 3, p. 310; am. 2003, ch. 201, § 19, p. 529; am. 2005, ch. 143, § 3, p. 441; am. 2005, ch. 277, § 4, p. 852; am. 2005, ch. 329, § 4, p. 1026; am. 2006, ch. 116, § 23, p. 315; am. 2009, ch. 65, § 3, p. 177; am. 2015, ch. 178, § 1, p. 579; am. 2018, ch. 228, § 5, p. 519; am. 2018, ch. 348, § 24, p. 795, was repealed by S.L. 2020, ch. 96, § 3, effective March 11, 2020.

Another former § 67-2602, which comprised S.L. 1915, ch. 71, § 6, p. 181; compiled and reen. C.L. 79:6; C.S., § 277; I.C.A., § 65-2502, was repealed by S.L. 1974, ch. 18, § 1.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

OPINIONS OF ATTORNEY GENERAL

Board and Commission Makeup.

North Carolina Dental Exam'rs v. F.T.C., — U.S. —, 135 S. Ct. 1101, 191 L. Ed.2d 35 (2015), has forced states to evaluate anew their various board and commission makeup and oversight, to the degree they wish for State Action Immunity to continue to apply to the actions and decisions of such boards and commissions. Specifically, the case requires states to consider the makeup of those boards and commissions that are controlled by market participants and how to actively supervise them. Active state supervision will be satisfied when a non-market-participant state official has and exercises power to substantively review such entities' decisions and

determine whether the action at issue effectuates the state's regulatory policies. OAG 2016-1.

§ 67-2602A. License fees — Military exemption. — All persons holding occupational or professional licenses issued by the state of Idaho and who are serving in the armed forces of the United States, or their allies, or auxiliary services thereof, and any prisoners of war in custody of the enemy countries of the United States or their allies, shall be exempt from the payment of any professional or occupational license or renewal fee required by any law of this state for the period during which such persons shall be engaged in the military services of the United States, or its auxiliary branches, or held as prisoners. And during such period of military service, or service in the auxiliary branches thereof, or servitude and for six (6) months following the discharge from such military service or auxiliary service, such license shall remain in good standing without the necessity of renewal and during said period the same shall not be cancelled, suspended or revoked.

History.

I.C., § 67-2602A, as added by 1996, ch. 98, § 19, p. 308; am. 2020, ch. 96, § 5; am. 2020, ch. 96, § 5, p. 246.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 96, deleted “including those in the armed services and auxiliary services and any prisoners of war as of July 1, 1942” following “United States or their allies” near the middle of the first sentence, and deleted “or servitude in the present war” following “military service or auxiliary service” near the middle of the last sentence.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Compiler's Notes.

Section 20 of S.L. 1996, ch. 98 provided: "All rules heretofore adopted by the state tax commission and in effect on the effective date of this act [January 1, 1997] shall remain in full force and effect unless and until superseded or replaced by rules duly adopted by the commission, or until the same are rejected, amended or modified by the legislature in accordance with the provisions of chapter 52, title 67, Idaho Code, or until they expire as provided in [section 67-5292, Idaho Code](#)."

Effective Dates.

Section 21 of S.L. 1996, ch. 98 provided the act shall be in full force and effect on and after January 1, 1997.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2603. Division administrator — Expenses. — The chief administrative officer of the division of occupational and professional licenses shall be the division administrator, who shall be appointed by the governor and shall serve at the pleasure of the governor. The expenses of the division administrator, and such administrative, technical or other personnel as may be deemed necessary for the conduct of the affairs of the division, shall be paid from the occupational licenses fund [account].

History.

I.C., § 67-2603, as added by 1974, ch. 13, § 2, p. 138; am. 1990, ch. 330, § 1, p. 907; am. 1995, ch. 170, § 1, p. 652; am. 2015, ch. 244, § 51, p. 1008; am. 2020, ch. 96, § 6, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-2603, which comprised S.L. 1919, ch. 8, § 27, p. 43; am. 1919, ch. 69, § 1, p. 246; C.S., § 278; I.C.A., § 65-2503, was repealed by S.L. 1974, ch. 18, § 1.

Amendments.

The 2015 amendment, by ch. 244, deleted the subsection (1) designation.

The 2020 amendment, by ch. 96, rewrote the section which formerly read: “**Bureau chief — Expenses.** The chief administrative officer of the bureau of occupational licenses shall be the bureau chief who shall be appointed by the governor and shall serve at the pleasure of the governor. The expenses of the bureau chief, and such secretarial, technical or other personnel as he may deem necessary for the conduct of the affairs of the bureau, shall be paid from the occupational licenses fund.”

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho

Code be understood to refer to the Division of Occupational and Professional Licenses.”

Compiler’s Notes.

The bracketed insertion at the end of the section was added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2604. Authority granted by written agreement. — Unless otherwise provided for by law, and pursuant to the terms of a written agreement executed between the division and the agency for which it shall act as authorized agent, the division of occupational and professional licenses shall provide such services and have and exercise such powers, duties and authority as the agreement shall specify. Each agreement so executed shall specify the following:

(1) The specific statutory authority by which the division shall act as authorized agent for the agency;

(2) The specific actions which the division administrator may, as executive officer of the division, take when acting in the interest of such agency;

(3) The actions which may be taken by the division administrator acting in discretion without specific authorization from the agency for which the division may act;

(4) The approximate cost of the services provided the agency by the division, if not otherwise provided by law, the terms of compensation to the division for services rendered, and the provision of bond for personnel of the division pursuant to chapter 8, title 59, Idaho Code;

(5) Each agreement executed between the division and the agency for which the division is authorized to act shall include the terms, conditions and procedures by which the division administrator may initiate proceedings to assure the collection and payment for services rendered by the division which are not otherwise provided for by law;

(6) The terms and conditions under which either party executing the agreement shall be able, without penalty, to terminate said agreement;

(7) The provision that all funds transferred to the division in compensation for services rendered shall be deposited in the occupational licenses fund [account] against which warrants shall be drawn by the division administrator in payment of expenses of the division in the administration of this chapter; and

(8) The provision that each such agreement so executed by the division and agency for which it may provide said services shall be approved by legal counsel for consistency with law before execution shall be valid.

History.

I.C., § 67-2604, as added by 1974, ch. 13, § 2, p. 138; am. 2020, ch. 96, § 7, p. 246.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401.

Prior Laws.

Former § 67-2604, which comprised S.L. 1917, ch. 66, § 8, p. 206; reen. C.L. 77:6; am. 1919, ch. 8, § 40, p. 43; C.S., § 279; I.C.A., § 65-2504, was repealed by S.L. 1974, ch. 18, § 1.

Amendments.

The 2020 amendment, by ch. 96, substituted “division administrator” for “bureau chief” and “division” for “bureau” throughout; substituted “division of occupational and professional licenses” for “bureau of occupational licenses” near the middle of the first sentence in the introductory paragraph; substituted “this chapter” for “this act” near the end of subsection (7); and substituted “legal counsel” for “the attorney general” near the end of subsection (8).

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Compiler’s Notes.

The bracketed insertion in subsection (7) was added by the compiler to correct the name of the referenced account. See § 67-2605.

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-2605. Occupational licenses account created — Disposition of fees. — There is hereby created a special account to be known as the occupational licenses account. All fees and renewal fees received by the division of occupational and professional licenses for licenses to engage in trades, businesses, occupations or professions shall be deposited to the credit of the occupational licenses account.

History.

I.C., § 67-2605, as added by 1974, ch. 13, § 2, p. 138; am. 1978, ch. 337, § 1, p. 870; am. 2020, ch. 96, § 8, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-2605, which comprised S.L. 1919, ch. 44, § 1, p. 142; C.S., § 280; I.C.A., § 65-2505, was repealed by S.L. 1974, ch. 18, § 1.

Amendments.

The 2020 amendment, by ch. 96, substituted “division of occupational and professional licenses” for “bureau of occupational licenses” near the beginning of the last sentence.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2606. Occupational licenses account — Payment of expenses of division from — Manner. — No moneys in the occupational license account may be expended except by appropriation. All expenses of the division of occupational and professional licenses, including salaries and/or wages of employees, incurred in administering the provisions of law relative to the licensing of trades, businesses, occupations and professions shall be paid out of the occupational licenses account by warrants drawn by the state controller upon the treasurer upon allowance of verified claims by the state board of examiners in the manner provided by law, but no claim shall be allowed except by the approval of the administrator of the division of occupational and professional licenses.

History.

I.C., § 67-2606, as added by 1974, ch. 13, § 2, p. 138; am. 1978, ch. 337, § 2, p. 870; am. 1994, ch. 180, § 198, p. 420; am. 2020, ch. 96, § 9, p. 246.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

The 2020 amendment, by ch. 96, substituted “division” for “bureau” in the section heading and, in the last sentence, substituted “division of occupational and professional licenses” for “bureau of occupational licenses” near the beginning and substituted “administrator of the division of occupational and professional licenses” for “chief of the bureau of occupational licenses” at the end.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March

11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.” Since such amendment was adopted, the amendment of this section by S.L. 1994, ch. 180, § 198 was effective January 2, 1995.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

**§ 67-2607. Occupational licenses fund — Continuing appropriation
— Annual transfer of surplus. [Repealed.]**

STATUTORY NOTES

Prior Laws.

Former § 67-2607, which comprised I.C., § 67-2607, as added by 1974, ch. 13, § 2, p. 138, was repealed by S.L. 1978, ch. 337, § 3.

Compiler's Notes.

This section, which comprised S.L. 1919, ch. 44, § 3, p. 142; C.S., § 282; I.C.A., § 65-2507; am. 1950 (E.S.), ch. 77, § 2, p. 103, was repealed by S.L. 1974, ch. 18, § 1.

§ 67-2608. Division administrator to cooperate with other agencies.

— The administrator of the division of occupational and professional licenses may, in the administration of this chapter, share information and otherwise cooperate with government regulatory and law enforcement agencies.

History.

I.C., § 67-2608, as added by 1974, ch. 13, § 2, p. 138; am. 2010, ch. 159, § 1, p. 333; am. 2020, ch. 96, § 10, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-2608, which comprised S.L. 1919, ch. 44, § 4, p. 142; C.S., § 283; I.C.A., § 65-2508; am. 1933, ch. 48, § 1, p. 77, was repealed by S.L. 1974, ch. 18, § 1.

Amendments.

The 2010 amendment, by ch. 159, substituted the language beginning “may, in the administration of this chapter” through to the end of the section for “is hereby directed, in the administration of this act, to cooperate with the other departments and agencies of the state of Idaho which have the responsibility of enforcing licensing, taxing and inspection laws.”

The 2020 amendment, by ch. 96, substituted “Division administrator” for “Bureau chief” at the beginning of the section heading, and substituted “administrator of the division of occupational and professional licenses” for “chief of the bureau of occupational licenses” at the beginning of the section.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho

Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2609. Registration of occupations. — The division of occupational and professional licenses shall, wherever the several laws regulating professions, trades, and occupations which are devolved upon the division for administration so require or pursuant to written agreement as provided in section 67-2604, Idaho Code, exercise, in its name, or as authorized agent, but subject to the provisions of this chapter, the following powers:

(1) To conduct examinations to ascertain the qualifications and fitness of applicants to exercise the profession, trade, or occupation for which an examination is held;

(2) To pass upon the qualifications of applicants for reciprocal licenses, certificates, and authorities;

(3) To require applications to be verified under oath;

(4) To require applicants to provide a clear and legible copy of a government-issued photo identification;

(5) To pass to the agencies it serves complete applications, which include all required documentation and fees for licenses, certificates, and authorities;

(6) To require all application materials be submitted to the division at least seven (7) days in advance of the scheduled meeting of an agency in order for the application to be reviewed by an agency for final action;

(7) Notwithstanding any other provisions of law, to terminate an application that has not had any activity within one (1) year;

(8) To issue a license, certificate, or authority only on behalf of an agency that has administrative rules approved by the legislature;

(9) To prescribe rules for a fair and wholly impartial method of examination of candidates to exercise the respective professions, trades, or occupations;

(10) To conduct hearings on proceedings to revoke or refuse renewal of licenses, certificates or authorities of persons exercising the respective

professions, trades, or occupations and to revoke or refuse to renew such licenses, certificates, or authorities;

(11) To formulate rules for adoption by the boards allowing the boards to assess costs and fees incurred in the investigation and prosecution or defense of a licensee in accordance with the provisions of [section 12-117\(5\), Idaho Code](#), and with the contested case provisions of chapter 52, title 67, Idaho Code, for an alleged violation of laws or rules of the boards;

(12) To formulate rules for adoption by the boards establishing a schedule of civil fines which may be imposed upon a licensee prosecuted in accordance with the contested case provisions of chapter 52, title 67, Idaho Code, for a violation of laws or rules of the boards. Any civil fine collected by a board for a violation of its laws or rules shall not exceed one thousand dollars (\$1,000), unless otherwise provided by statute, and shall be deposited in the occupational licensing account [occupational licenses account];

(13) To formulate rules when required in any act to be administered;

(14) To collect and pay such fees as are required for criminal background checks of applicants, licensees, or registrants;

(15) To provide an honorarium as set forth in [section 59-509\(p\), Idaho Code](#);

(16) To receive a fee not to exceed twenty-five dollars (\$25.00) for the making of copies of records or for a search of the files when no copies are made;

(17) To implement application processes that provide for clear administration of all licenses, registrations, permits, and certificates, including their status and history; and

(18) To ensure that fees collected by the division are not waived or refunded unless authorized by board rule or law.

History.

[I.C., § 67-2609](#), as added by 1974, ch. 13, § 2, p. 138; am. 1998, ch. 419, § 1, p. 1322; am. 2001, ch. 202, § 3, p. 681; am. 2013, ch. 178, § 1, p. 414; am. 2018, ch. 348, § 25, p. 795; am. 2020, ch. 96, § 11, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-2609, which comprised I.C., § 67-2609, as added by 1970, ch. 112, § 1, p. 274, was repealed by S.L. 1974, ch. 18, § 1.

Amendments.

The 2013 amendment, by ch. 178, added paragraph (a)(9).

The 2018 amendment, by ch. 348, in subsection (6), substituted “assess costs” for “recover costs” near the beginning, inserted “or defense” and “provisions of [section 12-117\(5\), Idaho Code](#), and with the” near the middle, and substituted “an alleged violation” for “a violation” near the end.

The 2020 amendment, by ch. 96, rewrote the section to the extent that a detailed comparison is impracticable.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Compiler’s Notes.

The bracketed insertion at the end of subsection (a)(12) was added by the compiler to correct the name of the referenced account. See § 67-2605.

S.L. 2018, Chapter 348 became law without the signature of the governor.

Effective Dates.

Section 4 of S.L. 2001, ch. 202 provided that the act should take effect on and after July 1, 2001.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2610. Registration of occupations — Reexaminations. —
Whenever the division administrator is satisfied that substantial justice has not been done either in an examination or in the revocation of or refusal to renew a license, certificate, or authority, he may order reexamination or rehearings.

History.

I.C., § 67-2610, as added by 2020, ch. 96, § 13, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-2610, Examiner's report, which comprised I.C., § 67-2610, as added by 1974, ch. 13, § 2, p. 138, which repealed by S.L. 2020, ch. 96, § 12, effective March 11, 2020.

Another former § 67-2610, which comprised S.L. 1972, ch. 191, § 1, p. 478, was repealed by S.L. 1974, ch. 18, § 1.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: "Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses."

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2611. Issuance of licenses — Issuance of duplicate — Fee. — (1) All certificates, licenses, and authorities, upon written application of the owner of a certificate, license, or authority, shall be issued by the division of occupational and professional licenses in the name of such division, with the Idaho state seal attached.

(2) The division of occupational and professional licenses may assess a reasonable fee for the issuance of an original or duplicate certificate, license, or authority.

History.

I.C., § 67-2611, as added by 2020, ch. 96, § 15, p. 246.

STATUTORY NOTES

Cross References.

Division of occupational and professional licenses, § 67-2602.

Prior Laws.

Former § 67-2611, Designation of examiners — Recommendation of professional societies, which comprised **I.C., § 67-2611**, as added by 1974, ch. 13, § 2, p. 138, was repealed by S.L. 2020, ch. 96, § 14, effective March 11, 2020.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2612. Recording of licenses. — Every license that may be issued by the division of occupational and professional licenses as a prerequisite to engage in a trade, occupation, or profession shall be recorded in the office of the division, which shall relieve the licensee from being required to record the same in the office of the county recorder in the county in which the licensee intends to practice. No fee shall be charged for recording of the license by the division.

History.

I.C., § 67-2612, as added by 2020, ch. 96, § 17, p. 246.

STATUTORY NOTES

Cross References.

Division of occupational and professional licenses, § 67-2602.

Prior Laws.

Former § 67-2612, Registration of occupations — Reexaminations, which comprised I.C., § 67-2612, as added by 1974, ch. 13, § 2, p. 138, was repealed by S.L. 2020, ch. 96, § 16, effective March 11, 2020.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2613. Limited application of this chapter. — The provisions of this chapter prescribing powers and duties of the division of occupational and professional licenses concerning regulation, examination, licensure, fees, and deposit thereof for trades, occupations, or professions shall be applicable only where such powers and duties are not invested by other provisions of law in any other board, commission, department, or agency.

History.

I.C., § 67-2613, as added by 2020, ch. 96, § 19, p. 246.

STATUTORY NOTES

Cross References.

Division of occupational and professional licenses, § 67-2602.

Prior Laws.

Former § 67-2613, Issuance of licenses — Loss of license — Issuance of duplicate — Fee, which comprised I.C., § 67-2613, as added by 1974, ch. 13, § 2, p. 138; am. 1976, ch. 166, § 24, p. 596, was repealed by S.L. 2020, ch. 96, § 18, effective March 11, 2020.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2614. Renewal or reinstatement of licenses. — (1) All licenses or registrations issued by the boards served by the division of occupational and professional licenses as a prerequisite to engaging in a trade, occupation, or profession shall be subject to annual renewal and shall expire and be canceled unless renewed prior to expiration as provided by this section. The required fees for annual renewals and reinstatements shall be the amounts set forth in the rules of the governing board. As used in this section, the term “person,” unless otherwise indicated, shall mean a natural person or an entity applying for licensure or registration pursuant to the laws or rules of a board served by the division.

(2) All natural persons required to procure a license or registration must annually renew the same on or before the birthday of the holder of the license or registration in the manner prescribed in subsection (4) of this section. However, the first renewal of the license or registration shall not be required until twelve (12) months after the holder’s next birthday following the initial licensure or registration.

(3) All persons required to procure a license or registration for an entity or a facility as a prerequisite for operating a business or place of business in which a trade, occupation, or profession is practiced must annually renew the same on or before the anniversary of the original issue date of the license or registration in the manner prescribed in subsection (4) of this section.

(4) Licenses or registrations may be renewed up to six (6) weeks prior to the expiration date.

(a) Submission of an approved and completed paper or electronic renewal application prior to expiration is the responsibility of each licensee or registrant. Failure to receive a renewal application or notice shall not excuse failure to comply with renewal requirements.

(b) The renewal application shall be submitted to the division along with the required renewal fee and confirmation of compliance with renewal requirements of the relevant board, including but not limited to insurance, completion of any continuing education, and payment of all

finest, costs, fees, including attorney's fees, or other amounts that are due and owing to the board or in compliance with a payment arrangement with the board.

(5) Applicants, licensees, permittees, and registrants are responsible for keeping their information up to date as follows:

(a) Whenever a change of the applicant's, licensee's, or registrant's address of record occurs, the licensee or registrant must immediately notify the division in writing of the change. The division will use the most recent mailing or electronic mail address it has on file for purposes of written communication with a licensee or registrant. It is the responsibility of each applicant, licensee, and registrant to keep the division informed of a current mailing and electronic mail address and any other contact information; and

(b) All substantive changes in professional status must be reported to the division in writing within ninety (90) days. Substantive changes may include but are not limited to:

(i) Any criminal convictions of felonies or misdemeanors other than traffic violations;

(ii) Administrative adjudicative proceedings against the applicant, licensee, or registrant in other states or jurisdictions;

(iii) Adjudicated ethics violations or other sanctions levied against the applicant, licensee, or registrant by a professional association or specialty association; and

(iv) Any civil proceedings adjudicated against the applicant, licensee, or registrant related to his license, registration, or certificate.

(6) Fees for renewal and reinstatement cannot be waived or refunded unless otherwise provided by board law or rule.

(7) If a license or registration is not renewed on or before the expiration date, it shall be immediately canceled by the division following the date of expiration. Within five (5) years of the date of expiration, the division may reinstate a license or registration canceled for failure to renew upon receiving documentation of compliance with requirements for timely renewal as set forth in subsection (4) (b) of this section and any other

reinstatement requirements of the board plus payment of a reinstatement fee as provided by board rule.

(8)(a) When a license or registration has been canceled for a period of more than five (5) years, the person so affected shall be required to make application for a new license or registration to the division. The application shall consist of the following:

(i) All forms and information required of an application for a new license or registration; and

(ii) The fee currently required of an applicant for a new license or registration.

(b) In addition to the application, the person shall provide all moneys due and owing to the board or proof that the person is in compliance with a payment arrangement made with the board.

(c) The person shall fulfill certain requirements as determined by the board that demonstrate the person's competency to resume practice in this state. Such requirements may include but are not limited to education, supervised practice, and examination. The board may consider the person's practice in another jurisdiction in determining the person's competency.

(d) Persons who fulfill the conditions and requirements of this subsection shall be issued a new license or registration.

History.

I.C., § 67-2614, as added by 2020, ch. 96, § 21, p. 246.

STATUTORY NOTES

Cross References.

Division of occupational and professional licenses, § 67-2602.

Prior Laws.

Former § 67-2614, which comprised **I.C., § 67-2614**, as added by 2015, ch. 179, § 2, p. 580, was repealed by S.L. 2020, ch. 96, § 20, effective March 11, 2020.

Another former § 67-2614, which comprised **I.C., § 67-2614**, as added by 1974, ch. 13, § 2, p. 138; am. 1994, ch. 15, § 3, p. 28; am. 2003, ch. 21, § 22, p. 77, was repealed by S.L. 2015, ch. 179, § 1, effective July 1, 2015.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2615. Reexamination and payment of certificate fees. — Should an applicant who is required to procure a license from the division of occupational and professional licenses as a prerequisite for engaging in a trade, occupation, or profession fail to pass the required examination, the applicant may be reexamined at any regular or special meeting of the division as it may be authorized to act for such board of examiners. Every person who is licensed by the division of occupational and professional licenses as a prerequisite to engage in a trade, occupation, or profession may, upon the payment of a fee, receive a certificate setting forth that the holder thereof is duly registered and licensed to practice his profession in the state of Idaho.

History.

I.C., § 67-2615, as added by 2020, ch. 96, § 23, p. 246.

STATUTORY NOTES

Cross References.

Division of occupational and professional licenses, § 67-2602.

Prior Laws.

Former § 67-2615, Limited application of this chapter, which comprised I.C., § 67-2615, as added by 1974, ch. 13, § 2, p. 138, was repealed by S.L. 2020, ch. 96, § 22, effective March 11, 2020.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2616. Clarification of definitions. — Solely for the purposes of chapter 14, title 67, Idaho Code, the associations created in chapters 36 and 43, title 41, Idaho Code, shall be considered self-governing entities as defined in this chapter, which creates the department of self-governing agencies.

History.

I.C., § 67-2616, as added by 2020, ch. 96, § 25, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-2616, Recording of licenses, which comprised I.C., § 67-2616, as added by 1974, ch. 13, § 2, p. 138, was repealed by S.L. 2020, ch. 96, § 24, effective March 11, 2020.

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses.”

Effective Dates.

Section 29 of S.L. 2020, ch. 96 declared an emergency. Approved March 11, 2020.

§ 67-2617. Payment of reexamination and certificate fees. [Repealed.]

Repealed by S.L. 2020, ch. 96, § 26, effective March 11, 2020.

History.

I.C., § 67-2617, as added by 1974, ch. 13, § 2, p. 138; am. 1976, ch. 166, § 25, p. 596.

Idaho Code § 67-2618

§ 67-2618. Attorney general to advise and represent. [Repealed.]

Repealed by S.L. 2020, ch. 96, § 27, effective March 11, 2020.

History.

I.C., § 67-2618, as added by 1974, ch. 13, § 2, p. 138.

§ 67-2619. Clarification of definitions. [Repealed.]

Repealed by S.L. 2020, ch. 96, § 28, effective March 11, 2020.

History.

I.C., § 67-2619, as added by 1995, ch. 184, § 1, p. 670.

§ 67-2620. Military education training and service — Qualifications for licensure, certification or registration. [Repealed.]

Repealed by S.L. 2019, ch. 296, § 2, effective July 1, 2019.

History.

I.C., § 67-2620, as added by 2012, ch. 108, § 2, p. 298; am. 2013, ch. 211, § 1, p. 500.

Chapter 27

DEPARTMENT OF FINANCE

Sec.

67-2701. Department of finance — Creation — Director — Organization — Powers and duties.

67-2702. Fees — Fines — Miscellaneous charges.

67-2703 — 67-2708. [Repealed.]

67-2709 — 67-2714. [Amended and Redesignated.]

67-2715. Rendering false statements is perjury. [Repealed.]

67-2716. [Amended and Redesignated.]

67-2717. Power to issue subpoenas and administer oaths — Obstructing examination — Penalty.

67-2718. [Amended and Redesignated.]

67-2719. Penalties. [Repealed.]

67-2720. Duty of attorney general to aid department.

67-2721, 67-2722. [Amended and Redesignated.]

67-2723. Expenses of carrying out provisions of state depository law — Audit and payment.

67-2724. Officers and persons authorized to make inspections and examinations.

67-2725. Banks eligible as depositories.

67-2725A. State treasurer prohibited from making deposits in banks or trust companies which have failed to pay all state and local taxes.

67-2726. Banks to which officials secretly indebted ineligible.

67-2727 — 67-2736. [Repealed.]

67-2737. Funds to be deposited.

67-2738. Permanent endowment funds temporarily in hands of treasurer.

67-2739. Designation of depository — Reporting of capital and surplus.

67-2740. Certificate to state treasurer. [Repealed.]

67-2741. Excess deposits.

67-2742. Withdrawal of moneys from depositories — Time deposits.

67-2743. Interest on time deposits.

67-2743A — 67-2743D. [Repealed.]

67-2743E. Disclosure or use of information relating to depositories — Penalty.

67-2744. Depositories to render monthly statements.

67-2745. Duty of treasurer upon receipt of notice of cancellation.

67-2746. Responsibility for loss through insolvency of bank.

67-2746A. Deposit for safekeeping — Responsibility.

67-2747. Treasurer to make no profit — Penalty.

67-2748. Neglect of treasurer a misdemeanor — Penalty.

67-2749. Bribery of treasurer a felony — Penalty.

67-2750. Short title.

67-2751. Definitions.

67-2752. Financial fraud illegal.

67-2753. Employment or affiliation of certain persons.

67-2754. Powers of director.

67-2755. Injunctions — Other remedies.

67-2756. Private remedies.

67-2757. Institution of criminal proceedings.

67-2758. Criminal penalties for violations — Limitation of actions.

67-2759. Criminal punishment under this act not exclusive.

67-2760. Judicial review of orders.

67-2761. Administration of act — Rules, forms and orders.

67-2762. Administrative public hearings — Exception.

67-2763, 67-2764. [Repealed.]

§ 67-2701. Department of finance — Creation — Director — Organization — Powers and duties. — (a) There is hereby created the department of finance. The department shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of state government. The governor shall appoint, with the advice and consent of the senate, a director of the department of finance who shall serve at the pleasure of the governor. The director shall have had at least five (5) years practical experience in the banking business, or shall have served for a like period in the banking division of this or some other state. Neither the director of the department nor any administrator of a division in the department shall be the owner of or financially interested either directly or indirectly in any banking or insurance corporation subject to the supervision of the department.

(b) The department of finance shall be composed of such divisions as are established by law and such other units as may be administratively established. The director of the department shall appoint, subject to the approval of the governor, an administrator for such divisions as may be established. The director shall, subject to the approval of the governor, fix the salary of each administrator.

(c) The director of the department of finance shall have power: 1. To exercise the rights, powers and duties vested by law in the department or in the director.

2. To execute the laws relating to banks and banking.

History.

1919, ch. 8, § 28, p. 43; C.S., § 284; am. 1921, ch. 22, § 1, p. 30; am. 1921, ch. 104, § 7, p. 233; I.C.A., § 65-2601; am. 1933, ch. 146, § 1, p. 225; am. 1947, ch. 60, § 1, p. 87; am. 1947, ch. 212, § 1, p. 497; am. 1974, ch. 24, § 2, p. 744.

STATUTORY NOTES

Cross References.

Banks and banking, Title 26, Idaho Code.

Collection agencies, § 26-2221 et seq.

Credit union law, administration, § 26-2101 et seq Department of commerce and industry abolished and its duties transferred to department of finance, § 67-3402.

Insurance, title 41.

Effective Dates.

Section 2 of S.L. 1921, ch. 22 declared an emergency. Approved February 16, 1921.

Section 2 of S.L. 1947, ch. 60 provided that said act should be in full force and effect on and after July 1, 1947.

Section 2 of S.L. 1947, ch. 212 provided that said act should be in full force and effect on and after July 1, 1947.

CASE NOTES

Decisions Under Prior Law Commissioner's Liability.

A bank commissioner or his surety is liable to an injured party for a breach of his official duty when he acts maliciously and wilfully or clearly abuses his discretion to the extent of acting in bad faith. *State v. American Sur. Co.*, 26 Idaho 652, 145 P. 1097 (1914).

§ 67-2702. Fees — Fines — Miscellaneous charges. — (1) The director of the department of finance shall collect and persons so served shall pay to the director the fees, fines, examination and miscellaneous charges provided for by the laws administered by the director of the department of finance or provided for from time to time by rule promulgated by the director of the department of finance. The director of the department of finance shall increase fees, fines, examination and miscellaneous charges as necessary to allow the department of finance to meet the appropriation as provided for by law.

(2) Finance administrative account:

(a) There is hereby created an account in the dedicated fund in the state treasury, to be designated the “finance administrative account” to provide for the expenses of the department of finance as provided for by law.

(b) The finance administrative account shall be effective December 31, 1984, and be in existence for a period of at least six (6) months prior to the dedicated account appropriation becoming effective and shall consist of the following:

(i) all moneys appropriated by the legislature.

(ii) all fees, fines, examination and miscellaneous charges collected by the department of finance.

(c) All moneys placed in the account shall be examined, audited and allowed in the manner now or hereinafter provided by law.

(d) Pending use for purposes of the provisions of the laws of this state, moneys in the finance administrative account shall be invested by the state treasurer in the same manner as provided under [section 67-1210, Idaho Code](#), with respect to other surplus or idle moneys in the state treasury.

(e) The director of the department of finance shall transmit all fees, fines, examination and miscellaneous charges collected by him to the state treasurer as provided under [section 59-1014, Idaho Code](#). The director of the department of finance shall file with the state controller, a statement

of each deposit thus made. All such funds received, unless otherwise specifically designated by another section of the law administered by the director of the department of finance shall be deposited into the finance administrative account.

(f) At the beginning of each fiscal year, those moneys in the finance administrative account which exceed the current year's appropriation plus any residual encumbrances made against prior year's appropriations by twenty-five percent (25%) or more shall be transferred to the general account [general fund].

History.

I.C., § 67-2702, as added by 1984, ch. 47, § 17, p. 76; am. 1994, ch. 180, § 199, p. 420; am. 1995, ch. 99, § 28, p. 299.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-2702, which comprised 1919, ch. 8, § 29, p. 43; C.S., § 285; am. 1923, ch. 164, § 1, p. 242; I.C.A., § 65-2602; am. 1933, ch. 103, § 1, p. 163, was repealed by S.L. 1974, ch. 24, § 1, p. 744.

Compiler's Notes.

The bracketed insertion at the end of the section was added by the compiler to correct the name of the referenced fund. See § 67-1205.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 199 was effective January 2, 1995.

§ 67-2703, 67-2704. Bureau of public accounts. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1935, ch. 151, §§ 1, 2, p. 368, were repealed by S.L. 1974, ch. 24, § 1, p. 744.

§ 67-2705. Inventory of state property. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1905, p. 386, § 2; reen. R.C., § 171; am. C.L. 12:2; C.S., § 286; I.C.A., § 65-2603, was repealed by § 2 of S.L. 1967, ch. 335. For present comparable law, see § 67-5746.

§ 67-2706 — 67-2708. Bookkeeping — Report on bondsmen — Examination of accounts. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1905, p. 386, §§ 3 to 5; reen. R.C., §§ 172 to 174; reen. C.L. 12:3 to 12:5; C.S., §§ 287 to 289; am. 1923, ch. 164, §§ 2 to 4, p. 242; I.C.A., §§ 65-2604 to 65-2606, were repealed by S.L. 1974, ch. 24, § 1, p. 744.

§ 67-2709 — 67-2714. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former §§ 67-2709 to 67-2714 were amended and redesignated as §§ 67-1026 to 67-1031 by S.L. 1974, ch. 24, §§ 4-8, p. 744. Subsequently, § 67-1026 was repealed in 1994. § 67-1027 was renumbered as § 67-1081. § 67-1028 was renumbered as § 67-1056. § 67-1029 was renumbered as § 67-1084. § 67-1030 was renumbered as § 67-1007. § 67-1031 was renumbered as § 67-1052.

§ 67-2715. Rendering false statements is perjury. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1905, p. 386, § 12; reen. R.C., § 181; reen. C.L. 12:12; C.S., § 296; I.C.A., § 65-2613, was repealed by S.L. 1974, ch. 24, § 1, p. 744.

§ 67-2716. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-2716 was amended and redesignated as § 67-1032 by S.L. 1974, ch. 24, § 9, p. 744 and subsequently renumbered as § 67-1053.

§ 67-2717. Power to issue subpoenas and administer oaths — Obstructing examination — Penalty. — The director of the department of finance may issue subpoenas and administer oaths, in the same manner, with the same power to enforce obedience thereof in the performance of his duties, as belongs and pertains to courts of law in this state. Any person refusing access to the department, or the director, to any such books or papers, or officers, agent, clerk, employee or other person aforesaid, or who shall obstruct such access, or who shall refuse to furnish any required information, or who shall in any manner hinder the thorough examination required by this chapter, of the officers or of the books, accounts, papers and finances pertaining to the officers, aforesaid, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or imprisonment in the state penitentiary for a period not exceeding one (1) year, or both.

History.

1905, p. 386, § 14; reen. R.C., § 183; reen. C.L. 12:14; C.S., § 298; am. 1923, ch. 164, § 12, p. 242; I.C.A., § 65-2615; am. 1974, ch. 24, § 10, p. 744.

§ 67-2718. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-2718 was amended and redesignated as § 67-1033 by S.L. 1974, ch. 24, § 11, p. 744 and was subsequently repealed by S.L. 1994, ch. 181, § 6, effective January 2, 1995.

§ 67-2719. Penalties. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1905, p. 386, § 16; am. R.C., § 185; reen. C.L. 12:16; C.S., § 300; I.C.A., § 65-2617, was repealed by S.L. 1974, ch. 24, § 1, p. 744.

§ 67-2720. Duty of attorney general to aid department. — The attorney general shall when called upon by the department of finance, aid it in any investigation or matter; giving legal advice, and shall supervise the prosecution of all offenders under the provisions of this chapter.

History.

1905, p. 386, § 17; reen. R.C., § 186; reen. C.L. 12:17; C.S., § 301; am. 1923, ch. 164, § 4, p. 242; I.C.A., § 65-2618; am. 1974, ch. 24, § 12, p. 744.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

§ 67-2721, 67-2722. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former §§ 67-2721 and 67-2722 were amended and redesignated as §§ 67-1034 and 67-1035 by S.L. 1974, ch. 24, §§ 13, 14, p. 744. Subsequently, § 67-1034 was renumbered as § 67-1054 and § 67-1035 was renumbered as § 67-1055.

§ 67-2723. Expenses of carrying out provisions of state depository law — Audit and payment. — Any expenses incurred in carrying out the provisions of the state depository law shall be audited by the state board of examiners and paid out of the general fund of the state.

History.

(See 1905, p. 305, § 5; R.C., § 131.) R.C., § 127c, as added by 1915, ch. 168, § 2, p. 379; reen. C.L. 13:4; C.S., § 304; I.C.A., § 65-2621.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

State board of examiners, § 67-2001 et seq.

State depository law, §§ 67-2723 to 67-2749.

CASE NOTES

Audit of Claims.

All expenses authorized by law to be incurred by this board must be passed on by state board of examiners. *State v. National Sur. Co.*, 29 Idaho 670, 161 P. 1026 (1916).

§ 67-2724. Officers and persons authorized to make inspections and examinations. — The governor, state controller, or the department of finance, or any person authorized in writing by them or it, may, during business hours, in the presence of the treasurer or his deputy, inspect and examine the books of account in the office of the treasurer, and all contracts, writings, securities, and other papers belonging to the state, or pertaining to the business thereof, held by the treasurer, and may inspect and count the moneys belonging to this state and the several funds thereof in the custody of the treasurer, and it is hereby made the duty of the state treasurer to furnish all reasonable facilities for the purpose.

And the governor, state treasurer, or the department of finance, or any person authorized in writing by them or it, may, likewise, during business hours, in the presence of the state controller or his deputy, inspect and examine the books of account in the office of the state controller, and all contracts, writings, securities, bonds, and other papers belonging to the state, or pertaining to the business thereof in the custody of the state controller, and it is hereby made the duty of the state controller to furnish all reasonable facilities for the purpose.

History.

Based upon 1905, p. 305, § 5; R.C., § 131; R.C., § 127d, as added by 1915, ch. 168, § 2, p. 379; reen. C.L. 13:5; C.S., § 305; am. 1923, ch. 164, § 16, p. 242; I.C.A., § 65-2622; am. 1994, ch. 180, § 200, p. 420; am. 2015, ch. 244, § 52, p. 1008.

STATUTORY NOTES

Cross References.

Power of governor to inspect, § 67-1217.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

The 2015 amendment, by ch. 244, substituted “state controller” for “state state controller” near the end of the second paragraph.

Effective Dates.

Section 17 of S.L. 1923, ch. 164 declared an emergency. Approved March 15, 1923.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 200 was effective January 2, 1995.

§ 67-2725. Banks eligible as depositories. — Any national bank or any state bank or trust company doing a banking business in this state may become a state depository by making application for that purpose to the state treasurer. Provided, as to banking corporations or national banking associations operating branches, that they first comply with section 67-2739, Idaho Code.

History.

Based upon 1905, p. 305, §§ 1, 3 and R.C., §§ 127, 130; am. 1909, p. 363; am. 1911, ch. 122, p. 384; R.C., § 128, as added by 1915, ch. 168, § 3, p. 380; reen. C.L. 13:6; C.S., § 306; I.C.A., § 65-2623; am. 1935, ch. 135, § 1, p. 326; am. 1976, ch. 238, § 1, p. 831; am. 1983, ch. 38, § 9, p. 89.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

CASE NOTES

Public Money Becomes Trust Fund.

When public money, such as money of an irrigation district, is deposited by a public officer in a bank, it becomes a trust fund and not a part of the estate of the bank; and, in case of insolvency of the bank, its receiver must treat such fund as the property of the true owner and not of the bank. *In re Bank of Nampa, Ltd.*, 29 Idaho 166, 157 P. 1117 (1916).

Cited *State ex rel. Turner v. Coffin*, 9 Idaho 338, 74 P. 962 (1903); *First Sec. Bank v. Enking*, 54 Idaho 735, 35 P.2d 266 (1934).

§ 67-2725A. State treasurer prohibited from making deposits in banks or trust companies which have failed to pay all state and local taxes. — The state treasurer shall not deposit moneys of the state in a bank or trust company which has failed to pay all state and local taxes, including corporate income or franchise taxes upon its corporate income or franchise, sales and use taxes upon its purchases of tangible personal property, and real and personal property taxes upon property owned or leased by such bank or trust company.

History.

I.C., § 67-2725A, as added by 1969, ch. 141, § 2, p. 447.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 3 of S.L. 1969, ch. 141 provided that this act shall become effective on and after January 1, 1970.

§ 67-2726. Banks to which officials secretly indebted ineligible. — No bank is eligible to become or remain a state depository, to which the state treasurer, state controller, or the chief deputy of either of them is directly indebted, unless the fact of such indebtedness is made known to the department of finance, but the amount and character of such indebtedness shall be subject to disclosure according to chapter 1, title 74, Idaho Code, and said department of finance shall treat such information in strict confidence. Any member of the department violating this provision shall be guilty of a misdemeanor, and punished therefor as provided by law.

In case of a violation by a state depository of this provision, the department of finance shall immediately cause all funds therein to be withdrawn and such bank shall be ineligible again to become a state depository during the incumbency of the official so indebted to said bank.

History.

R.C., § 128a, as added by 1915, ch. 168, § 4, p. 380; reen. C.L. 13:7; C.S., § 307; I.C.A., § 65-2624; am. 1980, ch. 84, § 4, p. 183; am. 1990, ch. 213, § 93, p. 480; am. 1994, ch. 180, § 201, p. 420; am. 2015, ch. 141, § 168, p. 379.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the first sentence of the first paragraph.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state

board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 201 was effective January 2, 1995.

§ 67-2727 — 67-2736. Securities and bonds. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1905, p. 305, §§ 1, 3, 4, 9, reen. R.C., §§ 127, 129 to 129h, 130, 135; 1909, p. 363; 1911, ch. 122, p. 384; 1915, ch. 168, §§ 5, 6, pp. 381 to 385; reen. C.L. §§ 13:8 to 13:17; C.S., §§ 308 to 317; 1919, ch. 102, § 1, p. 367; 1921, ch. 239, § 1, p. 530; 1925, ch. 190, §§ 1 to 6, p. 349; I.C.A., §§ 65-2625 to 65-2634; 1927, ch. 89, § 1, p. 114; 1931, ch. 79, § 1, p. 135; 1933, ch. 96, § 1, p. 15, were repealed by S.L. 1969, ch. 331, § 12.

§ 67-2737. Funds to be deposited. — The state treasurer shall deposit, subject to the provisions of this chapter and of section 67-1210, Idaho Code, in designated state depositories, all moneys of the state of Idaho coming into his hands.

History.

Based upon 1905, p. 305, § 1; R.C., § 127; am. 1909, p. 363; R.C., § 130, as added by 1915, ch. 168, § 7, p. 385; reen. C.L. 13:18; C.S., § 318; I.C.A., § 65-2635; am. 1969, ch. 331, § 1, p. 1038.

STATUTORY NOTES

Cross References.

Bee inspection special fund, § 22-2509.

Fish and game account, § 36-107.

Health facilities construction account, § 39-1415.

State aeronautics fund, § 21-211.

State brand account, § 25-1161.

State law library funds, § 4-105.

State treasurer, § 67-1201 et seq.

CASE NOTES

[Funds unlawfully deposited.](#)

[Preferred lien.](#)

[Private funds.](#)

Funds Unlawfully Deposited.

State funds deposited by state treasurer without authority of law in bank which has notice of their character are trust funds. [State v. Bruce, 17 Idaho 1, 102 P. 831 \(1909\).](#)

Preferred Lien.

State has preferred lien against general assets of insolvent bank for its funds commingled therewith; but not if its deposited funds are stolen or dissipated. *State v. Bruce*, 17 Idaho 1, 102 P. 831 (1909).

Private Funds.

When state, in exercise of a governmental function, takes possession of a private fund, pursuant to law, such fund becomes “moneys of the state of Idaho,” within the meaning of this section. *Chicago, M. & St. P. Ry. v. Public Utils. Comm’n*, 47 Idaho 346, 275 P. 780 (1929).

§ 67-2738. Permanent endowment funds temporarily in hands of treasurer. — All moneys temporarily in the hands of the state treasurer belonging to the permanent charitable, educational, public school or university lands endowment funds, or other funds under the control of the investment board, shall be deposited by him, subject to the provisions of this chapter, pending the investment thereof by the said board, who shall have control of the disposition and investment thereof, as is now or may hereafter be provided by law, and the treasurer shall withdraw the said funds from deposit at all times immediately upon the call of the said board.

History.

Based upon 1905, p. 305, § 10; R.C., § 136; am. 1909, p. 362; R.C., § 130a, as added by 1915, ch. 168, § 8, p. 385; compiled and reen. C.L. 13:19; C.S., § 319; am. 1921, ch. 243, § 1, p. 534; I.C.A., § 65-2636; am. 1974, ch. 24, § 15, p. 744.

STATUTORY NOTES

Cross References.

Charitable institutions permanent endowment fund, § 66-1103.

Endowment fund investment board, § 57-718.

Public school permanent endowment fund, § 33-902.

State treasurer, § 67-1201 et seq.

University permanent endowment fund, § 33-2909.

§ 67-2739. Designation of depository — Reporting of capital and surplus. — (1) The state treasurer shall designate institutions qualified under this chapter as a state depository or depositories. Such designation shall be determined by competitive bidding or by other means generally accepted as standard business practice. In no case shall the deposit or deposits of state funds in any state depository above the total covered by federal insurance exceed at any one time, in the aggregate, the total of the capital and surplus of such state depository. In the event that any bank has been designated as a depository under this chapter, such designation shall continue in force until revoked by the treasurer.

(2) Every banking corporation or national banking association designated as a state depository and holding any deposit of the funds of the state of Idaho under the provisions of this section shall, on or before beginning to hold such deposits or the effective date of this act, whichever shall be sooner, file with the state treasurer, the affidavit of one of its officers showing the amount of the capital stock and surplus of such association or corporation. In the event that such corporation or association has such an affidavit on file with the state treasurer on the effective date of this act, such affidavit or affidavits shall satisfy the requirement of this section until January 31 of the year next following the effective date of this act. Affidavits shall be effective for the purposes of this section for a period of one (1) year following the date of their filing. If such corporation or association is to continue as a designated state depository under this section, a like affidavit shall be filed in like manner for the succeeding year, on or before the date specified by the state treasurer. No such corporation or national banking association shall receive deposits from nor act as depository for the funds of the state of Idaho unless and until an affidavit as is herein required and which still continues in effect is on file with the state treasurer in accordance with this section.

(3) The state treasurer is authorized in his or her discretion and from time to time to negotiate for the payment to designated state depositories of reasonable compensation for services rendered in acting as such depositories. The method and/or rate of such compensation and the terms and conditions thereof shall be fixed by the state treasurer after such

negotiation, which may include the calling for bids for specific services. All bids received, whether by a formal bidding process or by negotiation, and the compensation fixed by the treasurer, which shall be in the form of a written agreement, shall be a matter of public record.

History.

I.C., § 67-2739, as added by 1983, ch. 38, § 11, p. 89; am. 1984, ch. 76, § 1, p. 140; am. 1998, ch. 239, § 1, p. 796.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-2739, which comprised: Based upon 1905, p. 305, § 1; R.C., § 127; am. 1909, p. 363, R.C., § 130b, as added by 1915, ch. 168, § 8, p. 385; reen. C.L. 13:20; C.S., § 320; am. 1921, ch. 239, § 2, p. 530; am. 1927, ch. 89, § 2, p. 114; I.C.A., § 65-2637; am. 1935, ch. 135, § 2, p. 326; am. 1969, ch. 331, § 2, p. 1038; am. 1970, ch. 75, § 1, p. 190; am. 1972, ch. 181, § 1, p. 460; am. 1974, ch. 24, § 16, p. 744; am. 1974, ch. 147, § 1, p. 1362; am. 1976, ch. 42, § 39, p. 90; am. 1977, ch. 221, § 1, p. 662; am. 1978, ch. 268, § 1, p. 615; am. 1980, ch. 171, § 1, p. 363; am. 1980, ch. 172, § 1, p. 365; am. 1980, ch. 173, § 2, p. 367, was repealed by S.L. 1983, ch. 38, § 10.

Compiler's Notes.

The phrase “the effective date of this act” in three places in subsection (2) refers to the effective date of S.L. 1983, Chapter 38, which was effective July 1, 1983.

Effective Dates.

Section 2 of S.L. 1984, ch. 76 declared an emergency. Approved March 23, 1984.

§ 67-2740. Certificate to state treasurer. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section which comprised: based upon 1905, p. 305, § 1; and which further comprised R.C., § 127; am. 1909, p. 363; R.C., § 130c, as added by 1915, ch. 168, § 8, p. 386; reen. C.L. 13:21; C.S., § 321; am. 1921, ch. 239, § 3, p. 530; am. 1925, ch. 190, § 7, p. 349; am. 1927, ch. 89, § 3, p. 114; I.C.A., § 65-2638; am. 1935, ch. 135, § 3, p. 326; am. 1963, ch. 72, § 2, p. 264; am. 1969, ch. 331, § 3, p. 1038 was repealed by S.L. 1977, ch. 133, § 1.

§ 67-2741. Excess deposits. — Where the amount to be deposited exceeds the amount which all state depositories in the state are willing to accept on the terms specified in this chapter, the state treasurer may, with the consent of the investment board, deposit the excess in any one (1) or more banks or trust companies in the state designated by the director of the department of finance, or if there be no bank or trust company in the state satisfactory to the investment board which is willing to accept such excess on the terms and conditions specified by the board, then in a bank or banks designated by said board outside the state, having a paidup capital and unimpaired surplus of not less than \$5,000,000, located in a reserve city, as designated by the United States comptroller of the currency, subject to such regulations, upon such conditions and with such security as the board may fix and determine, and except as in this section otherwise provided and in the special cases for which express statutory provision is made otherwise, the state treasurer shall not deposit the funds of the state in his custody in banks or trust companies located outside the state of Idaho.

History.

R.C., § 130d, as added by 1915, ch. 168, § 8, p. 386; reen. C.L. 13:22; C.S., § 322; I.C.A., § 65-2639; am. 1935, ch. 4, § 1, p. 15; am. 1935, ch. 135, § 4, p. 326; am. 1969, ch. 331, § 4, p. 1038; am. 1974, ch. 24, § 17, p. 744.

STATUTORY NOTES

Cross References.

Endowment fund investment board, § 57-718.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

For federal reserve bank districts and cities, see <https://www.federalreserve.gov/aboutthefed/federalreserve-system.htm>.

Effective Dates.

Section 2 of S.L. 1935, ch. 4 declared an emergency. Approved January 28, 1935.

Section 5 of S.L. 1935, ch. 135 declared an emergency. Approved March 19, 1935.

§ 67-2742. Withdrawal of moneys from depositories — Time deposits. — All deposits in state depositories shall be demand deposits or deposits in accounts upon which negotiable orders of withdrawal may be written, or in similar transaction deposit accounts except time deposits of idle moneys, as defined in section 67-1210, Idaho Code, which the treasurer is hereby authorized to make. If the proceeds of a time certificate of deposit are not credited or paid to the state treasury on the maturity date of the certificate after demand by the state, the depository shall pay a penalty of one-fourth of one percent (.0025) per day on the principal amount of such certificate commencing on the day following the date of maturity and continuing until the whole amount is credited or paid to the state.

History.

Based upon 1905, p. 305, § 1; R.C., § 127; am. 1909, p. 363; R.C., § 130e, as added by 1915, ch. 168, § 8, p. 386; reen. C.L. 13:23; C.S., § 323; am. 1925, ch. 190, § 8, p. 349; I.C.A., § 65-2640; am. 1969, ch. 331, § 5, p. 1038; am. 1970, ch. 122, § 1, p. 295; am. 1971, ch. 133, § 2, p. 516; am. 1973, ch. 272, § 1, p. 569; am. 1976, ch. 42, § 40, p. 90; am. 1981, ch. 2, § 3, p. 4; am. 1983, ch. 38, § 12, p. 89.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 3 of S.L. 1970, ch. 122 declared an emergency. Approved March 9, 1970.

Section 3 of S.L. 1971, ch. 133 declared an emergency. Approved March 17, 1971.

Section 42 of S.L. 1976, ch. 42, reads: “An emergency existing therefore, which emergency is hereby declared to exist, Sections 1, 2 and 3 of this act shall be in full force and effect on and after its passage and approval; Sections 16, 34, 35, 36 and 37 of this act shall be in full force and effect on

and after July 1, 1977. All other sections shall be in full force and effect on and after July 1, 1976.”

§ 67-2743. Interest on time deposits. — Every state depository shall pay interest upon time deposits made by the state treasurer at rates not less than those paid to investors for a deposit of the same amount and under like circumstances and conditions; provided, however, that such time deposits shall bear interest at a rate not in excess of the maximum rate permitted by any applicable government regulation.

History.

Based upon 1905, p. 305, § 1, R.C., § 127; am. 1909, p. 363; R.C., § 131, as added by 1915, ch. 168, § 9, p. 386; reen. C.L. 13:34; C.S., § 324; am. 1925, ch. 190, § 9, p. 349; I.C.A., § 65-2641; am. 1933, ch. 96, § 2, p. 151; am. 1937, ch. 100, § 1, p. 146, rep. and reen. 1969, ch. 331, § 6, p. 1038; am. 1970, ch. 142, § 1, p. 423; am. 1971, ch. 134, § 2, p. 518; am. 1973, ch. 272, § 2, p. 569; am. 1974, ch. 149, § 2, p. 1367; am. 1981, ch. 2, § 4, p. 4; am. 1981, ch. 146, § 2, p. 251; am. 1983, ch. 38, § 13, p. 89.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 3 of S.L. 1933, ch. 96 declared an emergency. Approved February 27, 1933.

Section 3 of S.L. 1970, ch. 142 declared an emergency. Approved March 12, 1970.

Section 3 of S.L. 1971, ch. 134 declared an emergency. Approved March 17, 1971.

Section 3 of S.L. 1974, ch. 149 declared an emergency. Approved March 29, 1974.

Section 5 of S.L. 1981, ch. 2 declared an emergency. Approved February 17, 1981.

CASE NOTES

Discretion of commissioner of finance.

Rate of interest.

Discretion of Commissioner of Finance.

Statutes requiring public and state depositories to pay interest on public funds at average of interest rates on daily bank balances in two clearinghouses to be determined semiannually by the commissioner of finance [now director of department of finance], did not vest commissioner [director] with discretion, but with simple duty of computing the average rate in effect on a fixed date. *First Sec. Bank v. Enking*, 54 Idaho 735, 35 P.2d 266 (1934) (decision prior to 1937 amendment).

Rate of Interest.

Where a statute fixed interest on state and public funds payable by depositories as the average of interest rates on daily bank balances in two clearinghouses on certain dates, but there was no interest rate on such balances except on other banks' deposits requiring thirty-one days' and sixty days' notice of withdrawal because of federal prohibitions, average of such interest rates was the rate payable under statutes. *First Sec. Bank v. Enking*, 54 Idaho 735, 35 P.2d 266 (1934) (decision prior to 1937 amendment).

Cited *State ex rel. Turner v. Coffin*, 9 Idaho 338, 74 P. 962 (1903).

§ 67-2743A. Powers of board. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-2743A, as added by 1969, ch. 331, § 7, p. 1038; am. 1977, ch. 305, § 1, p. 854, was repealed by S.L. 1980, ch. 171, § 2.

§ 67-2743B — 67-2743D. Rules and regulations — Compliance — Filing statement of condition. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised I.C., §§ 67-2743B to 67-2743D, as added by 1969, ch. 331, §§ 8 to 10, p. 1038; am. 1974, ch. 24, § 18, p. 744, were repealed by S.L. 1980, ch. 173, § 3.

§ 67-2743E. Disclosure or use of information relating to depositories — Penalty. — Information regarding the solvency of the bank obtained by the board, the department of finance, or office of state treasurer, shall be subject to disclosure according to chapter 1, title 74, Idaho Code, except that such disclosure is subject to the privilege set out in subsection (3) of section 26-1111, Idaho Code, and provided further, that the board, the department of finance and the office of state treasurer may disclose such information to federal or state bank examiners having a lawful right to examine said bank or to proper officials legally empowered to investigate criminal charges relating to said bank or to any of its directors or employees, provided that the provisions of this section shall not apply to information included as part of the daily, monthly, biennial or other official reports of the state treasurer's office. Any public official who violates any provision of this section shall forfeit his office or employment and shall also be guilty of a felony. Any person who is not lawfully entitled to such information and who attempts to obtain such information illegally or who misuses such information as he may have obtained shall be guilty of a felony.

History.

I.C., § 67-2743E, as added by 1969, ch. 331, § 11, p. 1038; am. 1970, ch. 155, § 1, p. 479; am. 1974, ch. 24, § 19, p. 744; am. 1990, ch. 213, § 94, p. 480; am. 1993, ch. 187, § 3, p. 477; am. 2015, ch. 141, § 169, p. 379.

STATUTORY NOTES

Cross References.

Endowment fund investment board, § 57-718.

Penalty for felony when not otherwise provided, § 18-112.

State treasurer, § 67-1201 et seq.

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the first sentence.

Effective Dates.

Section 13 of S.L. 1969, ch. 331 declared an emergency. Approved March 28, 1969.

Section 91 of S.L. 1974, ch. 24 declared this act to be in full force and effect on and after July 1, 1974.

Section 111 of S.L. 1990, ch. 213, as amended by § 16 of S.L. 1991, ch. 329, provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 67-2744. Depositories to render monthly statements. — The treasurer shall require, and it is hereby made the duty of every such depository to keep accurate accounts of all such moneys deposited with it, showing the amount deposited and when deposited, and to render, at the beginning of each and every month, to the treasurer and to the state controller when requested, a statement, in duplicate, showing the daily balance of the treasurer's moneys held by it during the month next preceding.

History.

1905, p. 305, § 2; am. 1907, p. 95, § 1; reen. R.C., § 128; R.C., § 131a, as added by 1915, ch. 168, § 10, p. 387; reen. C.L. 13:25; C.S., § 325; am. 1925, ch. 190, § 10, p. 349; I.C.A., § 65-2642; am. 1937, ch. 100, § 2, p. 146; am. 1980, ch. 84, § 5, p. 183; am. 1994, ch. 180, § 202, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

Section 3 of S.L. 1937, ch. 100 repealed all acts and parts of acts in conflict, insofar as the same are inconsistent.

Effective Dates.

Section 4 of S.L. 1937, ch. 100 provided that said act should take effect and be in full force and effect on and after August 24, 1937.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

Since such amendment was adopted, the amendment of this section by S.L. 1994, ch. 180, § 202 became effective January 2, 1995.

CASE NOTES

Private Funds.

Interest on private fund of which state takes possession, pursuant to law, must be apportioned to general fund. *Chicago, M. & St. P. Ry. v. Public Utils. Comm'n*, 47 Idaho 346, 275 P. 780 (1929).

Cited *First Sec. Bank v. Enking*, 54 Idaho 735, 35 P.2d 266 (1934).

§ 67-2745. Duty of treasurer upon receipt of notice of cancellation. —
Upon receiving the notice of cancellation hereinbefore provided for, the state treasurer shall cease to make any further deposits in said depository, unless and until it is reinstated by the department of finance and he shall give immediate notice to said depository of his intention to withdraw all time deposits after the expiration of the period fixed by said notice, which period shall be in accordance with the agreement in respect thereto made at the time of the deposit.

He shall withdraw all checking deposits before the expiration of ninety (90) days from the receipt of said notice of cancellation. Such withdrawals shall be made at such times and in such amounts as the treasurer shall deem advisable, subject to the supervisory control of the department of finance, but in no case shall he fail within ten (10) days after receipt of said notice to withdraw at least 25 per cent of the pro rata amount of the treasurer's deposit secured by said bond and to withdraw at least 25 per cent of said amount during every 25-day period thereafter until the whole amount has been withdrawn.

History.

R.C., § 131b, as added by 1915, ch. 168, § 10, p. 387; reen. C.L. 13:26; C.S., § 326; am. 1925, ch. 190, § 11, p. 349; I.C.A., § 65-2643.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The phrase "Upon receiving the notice of cancellation hereinbefore provided for" at the beginning of the section refers to provisions from S.L. 1915, Chapter 168 which are no longer compiled in the Idaho Code. The creation of the federal deposit insurance corporation in 1933 may have made those non-compiled provisions obsolete. See <https://www.fdic.gov>.

Effective Dates.

Section 12 of S.L. 1925, ch. 190 declared an emergency. Approved March 13, 1925.

§ 67-2746. Responsibility for loss through insolvency of bank. — The state treasurer shall not be liable personally or upon his official bond for any moneys that may be lost by reason of the failure or insolvency of any bank which becomes a depository under the state depository law, except insofar as his violation of any trust devolving upon him as such treasurer or any of the provisions of this chapter shall contribute to such loss.

History.

Based upon 1905, p. 305, § 5; R.C., § 131; R.C., § 131c, as added by 1915, ch. 168, § 10, p. 387; reen. C.L. 13:27; C.S., § 327; I.C.A., § 65-2644.

STATUTORY NOTES

Cross References.

State depository law, § 67-2723 to 67-2749.

State treasurer, § 67-1201 et seq.

§ 67-2746A. Deposit for safekeeping — Responsibility. — The state treasurer may deposit for safekeeping with a state or national bank or a federal reserve bank any bonds, notes, bills, debentures, obligations, certificates of indebtedness, warrants, or other evidences of indebtedness in which the moneys of the state of Idaho or its agencies are invested pursuant to law; provided the treasurer shall take from the bank a receipt for the securities deposited. The state treasurer may accept securities in authorized book entry form. The state treasurer shall not be responsible for securities so deposited until they are withdrawn by the treasurer from the bank, except insofar as a violation by the treasurer of the prudent man investment rule contributes to any loss.

History.

I.C., § 67-2746A, as added by 1974, ch. 147, § 2, p. 1362; am. 1983, ch. 38, § 14, p. 89.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 3 of S.L. 1974, ch. 147 declared an emergency. Approved March 29, 1974.

§ 67-2747. Treasurer to make no profit — Penalty. — The making of profit, directly or indirectly, by the state treasurer, out of any money in the state treasury, belonging to the state, the custody of which the state treasurer is charged with, by loaning or otherwise using it, or depositing the same in any manner contrary to law, or the removal by the state treasurer or by his consent, of such moneys, or a part thereof, out of the vault or safe of the treasurer's department, after the same shall have been provided by the state, or out of any legal depository of such moneys, except for the payment of warrants legally drawn, or for the purpose of investing the same, or for the purpose of depositing the same, under the provisions of this chapter, in banks which shall have qualified as depositories, shall constitute a felony, and, on conviction thereof, shall subject the treasurer to imprisonment in the state penitentiary for a term not exceeding two (2) years or a fine not exceeding five thousand dollars (\$5000), or to both such fine and imprisonment, and the treasurer shall be liable upon his official bond for all profits or losses realized from such unlawful use of such funds.

History.

1905, p. 305, § 6; am. R.C., § 132; reen. C.L. 13:28; C.S., § 328; I.C.A., § 65-2645; am. 1980, ch. 84, § 6, p. 183.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 7 of S.L. 1980, ch. 84 declared an emergency. Approved March 19, 1980.

§ 67-2748. Neglect of treasurer a misdemeanor — Penalty. — If the state treasurer shall willfully fail or refuse at any time to do or perform any act required of him by the state depository law, he shall be guilty of a misdemeanor, and upon conviction thereof, he shall be sentenced to pay a fine not exceeding \$5000.

History.

1905, p. 305, § 7; reen. R.C., § 133; reen. C.L. 13:29; C.S., § 329; I.C.A., § 65-2646.

STATUTORY NOTES

Cross References.

State depository law, §§ 67-2723 to 67-2749.

State treasurer, § 67-1201 et seq.

§ 67-2749. Bribery of treasurer a felony — Penalty. — The offering, or giving, directly or indirectly, by any bank or depository, or by any officer or stockholder thereof, or by any other person or persons in its or their behalf, or by its or their knowledge, acquiescence or authority, or in its or their interest, to the state treasurer, of any gift, compensation, reward or inducement, with the intent or for the purpose of inducing said treasurer to deposit funds of the state in any bank contrary to any law of this state, shall constitute a felony, and shall, upon conviction thereof, subject the party or parties offending to imprisonment in the state penitentiary for a period not exceeding two (2) years, or to a fine not exceeding \$5000, or to both such fine and imprisonment.

History.

1905, p. 305, § 8; am. R.C., § 134; reen. C.L. 13:30; C.S., § 330; I.C.A., § 65-2647.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

§ 67-2750. Short title. — This act shall be known and may be cited as the “Idaho Financial Fraud Prevention Act.”

History.

I.C., § 67-2750, as added by 2005, ch. 265, § 2, p. 810.

STATUTORY NOTES

Cross References.

For definition of “this act,” see § 67-2751(1).

Prior Laws.

Former § 67-2750, which comprised **I.C., § 67-2750**, as added by 1955, ch. 86, § 1, p. 189, was repealed by S.L. 1969, ch. 331, § 12.

Former § 67-2750, which comprised **I.C., § 67-2750**, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

§ 67-2751. Definitions. — As used in sections 67-2750 through 67-2762, Idaho Code:

(1) “Act” or “Idaho Financial Fraud Prevention Act” means **sections 67-2750 through 67-2762, Idaho Code**.

(2) “Department” means the Idaho department of finance.

(3) “Director” means the director of the Idaho department of finance or his designee.

(4) “Financial institution” means any state or federally chartered bank, savings bank, savings and loan association, thrift institution, holding company, credit union, credit union service organization, “regulated lender” as defined in **section 28-41-301, Idaho Code**, collection agency licensed under the Idaho collection agency act, mortgage lender, mortgage broker, or loan originator licensed under the Idaho residential mortgage practices act, licensee under the Idaho money transmitters act, escrow agency, or broker-dealer or investment advisor licensed under the Idaho securities act [uniform securities act (2004)] or federal law, or such an institution licensed under the laws of another state, and doing business in Idaho.

(5) “Person” means a natural person, firm, partnership, association, corporation, limited liability company, limited liability partnership, trust, or any other association of individuals, however organized, and whether or not citizens or residents of this state.

History.

I.C., § 67-2751, as added by 2005, ch. 265, § 3, p. 810; am. 2013, ch. 54, § 17, p. 108.

STATUTORY NOTES

Cross References.

Idaho collection agency act, § 26-2221 et seq.

Idaho money transmitters act, § 26-2901 et seq.

Idaho residential mortgage practices act, § 26-31-101 et seq.

Prior Laws.

Former § 67-2751, which comprised I.C., § 67-2751, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

Amendments.

The 2013 amendment, by ch. 54, substituted “section 28-41-301, Idaho Code” for “section 28-41-301(37), Idaho Code” near the middle of subsection (4).

Compiler’s Notes.

The bracketed insertion near the end of subsection (4) was added by the compiler to account for the 2004 repeal of the Idaho securities act and the enactment of the uniform securities act (2004). See § 30-14-101 et seq.

§ 67-2752. Financial fraud illegal. — It is unlawful for any person, directly or indirectly:

(1) To employ any device, scheme or artifice to defraud a financial institution;

(2) To obtain or attempt to obtain money, funds, credits, assets, securities, or other property owned by, or under the custody or control of a financial institution by means of false or fraudulent pretenses, representations, or promises or through the use of any fraudulent device, scheme, artifice, or fraudulent monetary instrument;

(3) To falsely represent that a person is a financial institution or a representative of a financial institution, for the purpose of obtaining money, goods, or services from any person;

(4) To obtain or record or attempt to obtain or record, personal identifying information of another person without the authorization of that person, for the purpose of obtaining money, goods, or services from any person, through a false or fraudulent representation that the person doing so is a financial institution. “Personal identifying information” has the same meaning as set forth in [section 18-3122\(10\), Idaho Code](#), or any successor to that section;

(5) To fraudulently make, emboss, encode, or use a financial transaction card, financial transaction card account number, personal identification code or credit card sales draft, as defined in sections 18-3122, 18-3123, 18-3124 and 18-3125A, Idaho Code, or any successors to those sections, for the purpose of obtaining money, goods, or services from any person; or

(6) While serving as an employee, agent or representative of a financial institution, to obtain or attempt to obtain the money, funds, credits, assets, securities, or other property owned by, held by, or under the custody or control of, the financial institution by means of false or fraudulent pretenses, representations, or promises or by means of any fraudulent device, scheme or artifice, or through the use of a fraudulent monetary instrument.

(7) To use in a manner likely to cause confusion or mistake or to deceive, the name, trademark, service mark, or logo of a financial institution in connection with the sale, offering for sale, distribution or advertising of any product or service without the consent of the financial institution.

History.

I.C., § 67-2752, as added by 2005, ch. 265, § 4, p. 810; am. 2007, ch. 126, § 8, p. 376.

STATUTORY NOTES

Prior Laws.

Former § 67-2752, which comprised **I.C., § 67-2752**, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

Amendments.

The 2007 amendment, by ch. 126, added subsection (7).

§ 67-2753. Employment or affiliation of certain persons. — Except with the prior written consent of the director, no person who has been convicted of, or who has pled nolo contendere [contendere] to, any criminal offense involving dishonesty, breach of trust or fiduciary duty, or money laundering, or who has been granted a withheld judgment based on such offense, or who has been found to have violated this act, shall seek employment with, accept employment by, become employed by, or continue in their employment with an Idaho state chartered or licensed financial institution.

History.

I.C., § 67-2753, as added by 2005, ch. 265, § 5, p. 810.

STATUTORY NOTES

Cross References.

For definition of “this act,” see § 67-2751(1).

Prior Laws.

Former § 67-2753, which comprised I.C., § 67-2753, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

Compiler’s Notes.

The bracketed insertion in this section was added by the compiler to correct the spelling of the enacted term.

§ 67-2754. Powers of director. — The director shall have the following powers and authority under this act:

(1) Investigations. The director may make such public or private investigations within or without this state as he deems necessary to determine whether any person has violated this act or is attempting or conspiring to violate this act. The investigative powers of the director under this act shall include, but not be limited to, participating in joint or multistate investigations with any regulatory or law enforcement agencies of this state, any other state, the federal government or authorized agency thereof, or any regulatory or law enforcement agency of another country. The director may also participate in any antifraud or criminal information network or service available to the director or the department.

(2) Statements. The director may require or permit any person to file a statement in writing, under oath, to appear before the director and give testimony, or otherwise, as the director may determine, as to all the facts and circumstances concerning the matter to be investigated.

(3) Publication. The director may publish information concerning any violation or attempted violation of this act, or any rule or order hereunder.

(4) Subpoenas and production. Either in the course of an investigation, or in any administrative proceeding brought pursuant to this act, in addition to the powers and penalties set forth in [section 67-2717, Idaho Code](#), the director may subpoena documents and witnesses, take evidence, require the production of any books, papers, correspondence, memoranda, agreements or other documents or records in any form or on any media, which the director, in his discretion, deems material or relevant.

(a) Failure to comply. In case of contumacy or refusal to obey a subpoena or order to compel production issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director or the officer designated by him, to produce documentary evidence if so ordered, to appear and produce testimony if so ordered, or to give evidence relating to the matter under investigation or proceeding and any failure to obey

such order of the court may be punished by the court as a contempt of court.

(b) Use of evidence or testimony. No person is excused from attending and testifying, from producing any document or record before the director or obeying the subpoena of the director or any officer designated by him or in any proceeding instituted by the director on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(5) Licensing and registration. The director may approve a multistate licensing system for use by persons seeking to obtain, maintain and retain a license under the laws administered by the department of finance. A person who chooses to use an approved multistate licensing system for licensure shall comply with all procedures, requirements and policies of that licensing system including, but not limited to, fees, renewal dates, reinstatement periods, reports and deadlines and may not convert to an alternative licensing system without the prior written consent of the director.

History.

I.C., § 67-2754, as added by 2005, ch. 265, § 6, p. 810; am. 2013, ch. 53, § 1, p. 106.

STATUTORY NOTES

Cross References.

Contempt, § 7-601 et seq.

For definition of “this act,” see § 67-2751(1).

Perjury, § 18-5401 et seq.

Prior Laws.

Former § 67-2754, which comprised I.C., § 67-2754, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

Amendments.

The 2013 amendment, by ch. 53, added subsection (5).

§ 67-2755. Injunctions — Other remedies. — Whenever it appears to the director that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, he may in his discretion:

(1) Order the person to cease and desist from the violation or attempted violation of any provision of this act, rule or order hereunder, if, in the determination of the director, it is necessary to protect any financial institution or the public, or a person is violating or is about to violate this act, or other good cause justifies the same, without prior notice to the person or opportunity for hearing.

(2) Order the person to cease and desist from the violation or attempted violation of any provision of this act, rule or order hereunder and, after giving reasonable notice and opportunity for a hearing, issue the following:

(a) An order restoring to any financial institution or person in interest any consideration, funds or property which may have been acquired or transferred in violation of this act;

(b) An order that the person violating this act, or any rule or order hereunder, pay a civil penalty to the department of finance in an amount not to exceed five thousand dollars (\$5,000) for each violation. In the event a person violating this act knowingly accepts money representing (i) equity in a person's home, (ii) a withdrawal from any individual retirement account or similar account or (iii) a withdrawal from any qualified retirement plan as defined in the Internal Revenue Code, that person may be ordered by the director to pay a civil penalty to the department of finance in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(c) In addition to the penalties set forth in paragraph (b) of this subsection, in the event a person violating this act has knowledge that the victim is an elder or dependent adult, that person may be ordered by the director to pay a civil penalty to the department of finance in an amount not to exceed ten thousand dollars (\$10,000) for each violation. As used in this section, "elder" means any person who is sixty-five (65) years of

age or older. As used in this section, “dependent adult” means any person who is between the ages of eighteen (18) and sixty-four (64) years, who has physical or mental limitations which restrict the person’s ability to carry out normal activities or to protect the person’s rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age or illness;

(d) An order that the person violating this act, or any rule or order hereunder, pay costs, which in the discretion of the director may include an amount representing reasonable attorney’s fees and reimbursements of investigative efforts; or

(e) An order granting other appropriate remedies.

(3) Enter into a consent order, or other administrative order or agreement, setting forth requirements, limitations and restrictions on the future conduct or practices of a person violating this act. A consent order, or other administrative order or agreement entered into pursuant to this act, may include assessment of any of the penalties authorized in subsection (2) of this section.

(4) Bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a showing that a person has engaged or is about to engage in any act or practice constituting a violation of this act or any rule hereunder, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted. The director shall not be required to furnish a bond.

(5) In addition to the remedies in subsection (4) of this section, the director, in his discretion and upon a showing in any court of competent jurisdiction that a person has violated the provisions of this act or any rule or order hereunder, may be granted the following additional remedies:

(a) An order restoring to any financial institution or to any person in interest any consideration, funds or property which may have been acquired or transferred in violation of this act;

(b) An order that the person violating this act, rules or any order hereunder pay a civil penalty to the department of finance in an amount

not to exceed ten thousand dollars (\$10,000) for each violation;

(c) An order awarding the director all costs incurred, which in the discretion of the court may include an amount representing reasonable attorney's fees and reimbursements for investigative efforts; or

(d) An order granting other appropriate remedies.

(6) Liability for sanctions, both civil and criminal, and personal jurisdiction shall extend to all persons who engaged in violations or attempted violations or who aided and abetted others or conspired with others in violations or attempted violations of this act and rules and orders hereunder. Officers and directors of corporations shall not be exempt from actions brought for violations, merely because of their capacity as officers or directors, if they have participated in acts making the violations possible or if they have actual or constructive knowledge of violations by the corporation while acting as an officer, director or member.

History.

I.C., § 67-2755, as added by 2005, ch. 265, § 7, p. 810.

STATUTORY NOTES

Cross References.

For definition of "this act," see § 67-2751(1).

Prior Laws.

Former § 67-2755, which comprised I.C., § 67-2755, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

Federal References.

The Internal Revenue Code, referred to in subsection (2)(b), is codified as Title 26 of the United States Code. "Qualified retirement plan" is defined in 26 U.S.C.S. § 4974.

§ 67-2756. Private remedies. — (1) In the event a financial institution indemnifies its customer for damages caused by a violation of this act, or assumes the loss caused its customer by a violation of this act, the financial institution shall be entitled to sue the violator, at law or in equity, to recover any actual damages suffered by its customer, plus costs and attorney's fees incurred in the bringing of the action.

(2) A financial institution may bring an action to enjoin the use prohibited in [section 67-2752\(7\), Idaho Code](#), and recover all damages suffered by reason of the prohibited use, including reasonable attorney's fees. The financial institution may recover any profits derived from the prohibited use.

History.

[I.C., § 67-2756](#), as added by 2005, ch. 265, § 8, p. 810; am. 2007, ch. 126, § 9, p. 376.

STATUTORY NOTES

Cross References.

For definition of “this act,” see § 67-2751(1).

Prior Laws.

Former § 67-2756, which comprised [I.C., § 67-2756](#), as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

Amendments.

The 2007 amendment, by ch. 126, rewrote the section catchline, which formerly read: “Customer indemnification”; and added the subsection (1) designation and subsection (2).

§ 67-2757. Institution of criminal proceedings. — The director may refer such evidence as may be available concerning violations of this act or any rule or order hereunder to the attorney general, prosecuting attorney, United States attorney, county, state or federal law enforcement agency, or foreign law enforcement agency or prosecutor. Any county prosecuting attorney, or the attorney general may, in his discretion, with or without such a referral, institute appropriate criminal proceedings under this act.

History.

I.C., § 67-2757, as added by 2005, ch. 265, § 9, p. 810.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

For definition of “this act,” see § 67-2751(1).

Prior Laws.

Former § 67-2757, which comprised I.C., § 67-2757, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

§ 67-2758. Criminal penalties for violations — Limitation of actions.

— (1) Any person who violates any provision of this act or who violates any rule or order hereunder, shall be guilty of a felony and, upon conviction, be fined not more than five thousand dollars (\$5,000) or imprisoned not more than three (3) years, or both.

(2) In the event a person violates any provision of this act or any rule or order hereunder, and accepts money under any of the circumstances described in [section 67-2755\(2\)\(b\), Idaho Code](#), or accepts money under any of the facts described in [section 67-2755\(2\)\(c\), Idaho Code](#), shall, upon conviction, be fined not more than ten thousand dollars (\$10,000) or imprisoned not more than five (5) years for each violation, or both.

(3) No indictment or information may be returned under this act more than five (5) years after the alleged violation.

History.

[I.C., § 67-2758](#), as added by 2005, ch. 265, § 10, p. 810.

STATUTORY NOTES

Cross References.

For definition of “this act,” see § 67-2751(1).

Prior Laws.

Former § 67-2758, which comprised [I.C., § 67-2758](#), as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

§ 67-2759. Criminal punishment under this act not exclusive. — Nothing in this act limits the power of the state or any other law enforcement agency to proceed against and punish any person for any conduct which constitutes a crime under any applicable law, statute, code or ordinance.

History.

I.C., § 67-2759, as added by 2005, ch. 265, § 11, p. 810.

STATUTORY NOTES

Cross References.

For definition of “this act,” see § 67-2751(1).

Prior Laws.

Former § 67-2759, which comprised I.C., § 67-2759, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

§ 67-2760. Judicial review of orders. — Any person aggrieved by a final order of the director may obtain judicial review of that order pursuant to the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 67-2760, as added by 2005, ch. 265, § 12, p. 810.

STATUTORY NOTES

Prior Laws.

Former § 67-2760, which comprised **I.C., § 67-2760**, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

§ 67-2761. Administration of act — Rules, forms and orders. — The administration of the provisions of this act shall be under the general supervision and control of the director. The director may from time to time make, amend and rescind such rules, forms and orders as are necessary to carry out the provisions of this act. No rule or form may be made unless the director finds that the action is necessary or appropriate in the public interest or for the protection of financial institutions and consistent with the purposes of this act.

History.

I.C., § 67-2761, as added by 2005, ch. 265, § 13, p. 810.

STATUTORY NOTES

Cross References.

For definition of “this act,” see § 67-2751(1).

Prior Laws.

Former § 67-2761, which comprised I.C., § 67-2761, as added by 1988, ch. 187, § 1, p. 325; am. 1993, ch. 216, § 100, p. 587, was repealed by S.L. 2005, ch. 265, § 1.

§ 67-2762. Administrative public hearings — Exception. — Every hearing in an administrative proceeding shall be public unless the director in his discretion grants a request that the hearing be conducted privately.

History.

I.C., § 67-2762, as added by 2005, ch. 265, § 14, p. 810.

STATUTORY NOTES

Prior Laws.

Former § 67-2762, which comprised **I.C., § 67-2762**, as added by 1988, ch. 187, § 1, p. 325, was repealed by S.L. 2005, ch. 265, § 1.

§ 67-2763, 67-2764. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

The following sections were repealed by S.L. 2005, ch. 265, § 1: 67-2763. Criminal penalties. [I.C., § 67-2763, as added by 1988, ch. 187, § 1, p. 325.]

67-2764. Regulatory authority. [I.C., § 67-2764, as added by 1988, ch. 187, § 1, p. 325.]

Chapter 28

PURCHASING BY POLITICAL SUBDIVISIONS

Sec.

67-2801. Legislative intent.

67-2802. Applicability.

67-2802A. Discrimination in procurement prohibited.

67-2803. Exclusions.

67-2804. Waiver.

67-2805. Procurement of public works construction.

67-2806. Procuring services or personal property.

67-2806A. Request for proposal.

67-2807. Cooperative purchasing.

67-2808. Emergency expenditures and sole source expenditures.

67-2809. Legislative intent — Public works — Agreements — Savings — Severability.

§ 67-2801. Legislative intent. — Efficient and cost-effective procurement of goods, services and public works construction is an important aspect of local government operations. Local public agencies should endeavor to buy goods, services and public works construction by way of a publicly accountable process that respects the shared goals of economy and quality. Political subdivisions of the state shall endeavor to purchase goods and services from vendors with a significant Idaho economic presence.

History.

I.C., § 67-2801, as added by 2005, ch. 213, § 37, p. 637.

STATUTORY NOTES

Prior Laws.

Former § 67-2801, which comprised S.L. 1919, ch. 8, § 30, p. 43; C.S., § 331; I.C.A., § 65-2701, was repealed by S.L. 1949, ch. 254, § 9.

CASE NOTES

Cited Walco, Inc. v. County of Idaho, 159 Idaho 131, 357 P.3d 856 (2015).

§ 67-2802. Applicability. — The provisions of this chapter establish procurement requirements for all political subdivisions of the state of Idaho. The public works construction procurement process set forth in this chapter shall function in a complementary manner with the public works contractors license board and the procedures which that board administers. Any general procurement procedures set forth in this chapter shall be supplemented by the provisions of any specific statute pertaining to the awarding of any contract for the purchase or acquisition of any service, commodity or thing made expressly applicable to any particular political subdivision or by means of any additional administrative process that otherwise establishes additional express requirements. No provisions of this chapter shall be deemed to preclude the use of procurement procedures otherwise authorized by law.

History.

I.C., § 67-2802, as added by 2005, ch. 213, § 37, p. 637.

STATUTORY NOTES

Cross References.

Public works contractors license board, § 54-1905.

§ 67-2802A. Discrimination in procurement prohibited. — Political subdivisions of the state of Idaho in their procurements governed by this chapter shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin unless permitted by an exception described in section 67-5909A, Idaho Code.

History.

I.C., § 67-2802A, as added by 2020, ch. 331, § 2, p. 963.

§ 67-2803. Exclusions. — The procurement requirements established in this chapter shall not be applicable to:

(1) The acquisition of personal property when the procurement duplicates the price and substance of a contract for like goods or services that has been competitively bid by the state of Idaho, one (1) of its political subdivisions, or an agency of the federal government; (2) Contracts or purchases wherein expenditures are less than fifty thousand dollars (\$50,000), provided such contracts or purchases shall be guided by the best interests of the political subdivision procuring the goods and services as determined by the governing board; (3) Disbursement of wages or compensation to any employee, official or agent of a political subdivision for the performance of personal services for the political subdivision; (4) Procurement of personal or professional services to be performed by an independent contractor for the political subdivision; (5) Procurement of an interest in real property; (6) Procurement of insurance;

(7) Costs of participation in a joint powers agreement with other units of government; (8) Procurement of used personal property;

(9) Procurement from federal government general services administration (GSA) schedules or federal multiple award schedules (MAS); (10) Procurement of personal property or services through contracts entered into by the division of purchasing of the department of administration of the state of Idaho; (11) Procurement of goods for direct resale; (12) Procurement of travel and training;

(13) Procurement of goods and services from Idaho correctional industries; (14) Procurement of repair for heavy equipment; (15) Procurement of software maintenance, support and licenses of an existing system or platform that was bid in compliance with state law; (16) Procurement of public utilities;

(17) Procurement of food for use in jails or detention facilities; or (18) Procurement of used equipment at an auction if authorized by the governing board.

History.

I.C., § 67-2803, as added by 2005, ch. 213, § 37, p. 637; am. 2009, ch. 174, § 1, p. 554; am. 2010, ch. 123, § 1, p. 269; am. 2011, ch. 320, § 1, p. 937; am. 2016, ch. 290, § 1, p. 820; am. 2017, ch. 197, § 4, p. 482.

STATUTORY NOTES

Cross References.

Correctional industries act, § 20-401 et seq.

Division of purchasing, § 67-9204.

Amendments.

The 2009 amendment, by ch. 174, added subsection (8).

The 2010 amendment, by ch. 123, inserted “drainage districts” in subsection (8).

The 2011 amendment, by ch. 320, added subsection (9).

The 2016 amendment, by ch. 290, added subsection (10).

The 2017 amendment, by ch. 197 substituted “fifty thousand dollars (\$50,000)” for “twenty-five thousand dollars (\$25,000)” in subsection (2); deleted “by irrigation districts, drainage districts and their boards of control” at the end of subsection (8); added “Procurement from” at the beginning of subsection (9); substituted “Procurement” for “The acquisition” at the beginning of subsection (10); and added subsections (11) through (14).

Compiler’s Notes.

For more on general services administration schedules and federal multiple award schedules, referred to in subsection (9), see <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-schedules>.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

§ 67-2804. Waiver. — (1) Whenever the provisions of this chapter require a public works contractor's license to bid upon a public construction project, such requirement shall be deemed waived whenever federal law prohibits requiring licensure as a precondition for submitting a bid.

(2) Nothing in this section shall be deemed to prohibit a political subdivision from performing construction or repair work on the political subdivision's own facilities.

(3) Whenever this chapter provides time limits for objection or appeal, any objection or appeal not perfected within such time limitations shall be deemed to constitute a waiver of any rights to raise such objection or appeal thereafter.

History.

I.C., § 67-2804, as added by 2005, ch. 213, § 37, p. 637.

STATUTORY NOTES

Cross References.

Public works contractors, § 54-1901 et seq.

§ 67-2805. Procurement of public works construction. — (1) When a political subdivision contemplates an expenditure to procure public works construction valued at or in excess of fifty thousand dollars (\$50,000) but not to exceed two hundred thousand dollars (\$200,000), the procurement procedures of this subsection shall apply:

(a) The solicitation for bids for the public works construction to be performed shall be supplied to no fewer than three (3) owner-designated licensed public works contractors by written means, either by electronic or physical delivery. The solicitation shall describe the construction work to be completed in sufficient detail to allow an experienced public works contractor to understand the construction project the political subdivision seeks to build.

(b) The solicitation for bids shall describe the electronic or physical delivery method or methods authorized to submit a bid, the date and time by which a bid proposal must be received by the clerk, secretary or other authorized official of the political subdivision, and shall provide a reasonable time to respond to the solicitation, provided that except in the event of an emergency, such time shall not be less than three (3) business days.

(c) Written objections to specifications or bid procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least one (1) business day before the date and time upon which bids are scheduled to be received.

(d) When written bids have been received, by either physical or electronic delivery, they shall be submitted to the governing board or a designee of the governing board who shall present the lowest responsive bid to the governing board for approval or, if authorized, approve the bid. The governing board or the board's designee shall approve the responsive bid proposing the lowest procurement price or reject all bids and publish notice for bids, as before.

(e) If the political subdivision finds that it is impractical or impossible to obtain three (3) bids for the proposed public works procurement, the

political subdivision may acquire the work in any manner the political subdivision deems best from a qualified public works contractor quoting the lowest price. When fewer than three (3) bids are considered, a description of the efforts undertaken to procure at least three (3) bids shall be documented by the political subdivision and such documentation shall be maintained for at least six (6) months after the procurement decision is made. If two (2) or more price quotations offered by different licensed public works contractors are the same and the lowest responsive bids, the governing board or governing-board authorized official may accept the one (1) it chooses.

(2) When a political subdivision contemplates an expenditure to purchase public works construction valued in excess of two hundred thousand dollars (\$200,000), the procurement procedures of this subsection shall apply. The purchase of construction services shall be made pursuant to a competitive sealed bid process with the purchase to be made from the qualified public works contractor submitting the lowest bid price complying with bidding procedures and meeting the prequalifications, if any are provided, established by the bid documents. Competitive bidding for public works may proceed through either of two (2) alternative procedures as set forth below:

(a) Category A. Competitive bidding procedures shall be open to receipt of bids from any licensed public works contractor desiring to bid upon a public works project. For a category A bid, the political subdivision may only consider the amount bid, bidder compliance with administrative requirements of the bidding process, and whether the bidder holds the requisite license, and shall award the bid to the qualified bidder submitting the lowest responsive bid.

(i) The request for bids for a category A procurement shall set a date and place for the public opening of bids. Two (2) notices soliciting bids shall be published in the official newspaper of the political subdivision. The first notice shall be published at least two (2) weeks before the date for opening bids, with the second notice to be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and

special instructions shall be made available upon request and payment of a reasonable plan copy fee by any interested bidder.

(ii) Written objections to specifications or bidding procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which bids are scheduled to be opened. The administrative officer or governing board supervising the bidding process shall respond to any such objection in writing and communicate such response to the objector and all other plan holders, adjusting bidding timeframes if necessary.

(iii) All bids shall be presented or otherwise delivered under sealed cover to the clerk of the political subdivision or other authorized agent of the political subdivision designated by the information provided to bidders by the political subdivision with a concise statement marked on the outside generally identifying the project to which the bid pertains.

(iv) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

(A) Cash;

(B) A cashier's check made payable to the political subdivision;

(C) A certified check made payable to the political subdivision; or

(D) A bidder's bond executed by a qualified surety company, made payable to the political subdivision.

(v) Any bid received by the political subdivision may not be withdrawn after the date and time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public at a designated place and time, thereafter to be compiled and submitted to

the governing board for award or, if a designee is authorized, for approval of the award.

(vi) If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision at the sole discretion of the political subdivision and the proceeds shall be deposited in a designated fund out of which the expenses of procuring substitute performance are paid.

(vii) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the qualified bidder submitting the next lowest responsive bid. If the governing board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security may be applied by the political subdivision to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security to the owner.

(viii) In its discretion, the governing board may reject all bids presented and re-bid, or the governing board may, after finding it to be a fact, pass a resolution declaring that the project sought to be accomplished by the expenditure can be performed more economically by purchasing goods and services on the open market. If identical bids are received, the governing board may choose the bidder it prefers. If no bids are received, the governing board may procure the goods or services without further competitive bidding procedures.

(ix) If the governing board of any political subdivision chooses to award a competitively bid contract involving the procurement of public works construction to a bidder other than the apparent low bidder, the political subdivision shall declare its reason or reasons on the record and shall communicate such reason or reasons in writing to all persons who have submitted a competing bid.

(x) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting

forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor. After completion of the review process, the political subdivision may proceed as it deems to be in the public interest.

(b) Category B. Competitive bidding procedures shall be open to licensed public works contractors only after meeting preliminary supplemental qualifications established by the political subdivision. The solicitation for bids in a category B procurement shall consist of two (2) stages, an initial stage determining supplemental prequalifications for licensed contractors, either prime or specialty contractors, followed by a stage during which bid prices will be accepted only from prequalified contractors.

(i) Notice of the prequalification stage of the category B competitive bidding process shall be given in the same manner that notice of competitive bidding is provided for a category A competitive bid request, providing a specific date and time by which qualifications statements must be received. Political subdivisions may establish prequalification standards premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the political subdivision, available nonfinancial resources, equipment and personnel as they relate to the subject project, and overall performance history based upon a contractor's entire body of work. Such request must include the standards for evaluating the qualifications of prospective bidders.

(ii) During the initial stage of the category B bidding process, licensed contractors desiring to be prequalified to bid on a project must submit a written response to a political subdivision's request for qualifications.

(iii) Written objections to prequalification procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which prequalification statements are due. The administrative officer or governing board supervising the bidding process shall

respond to any such objection in writing and communicate such response to the objector and all other contractors seeking to prequalify, adjusting bidding timeframes if necessary. After a review of qualification submittals, the political subdivision may select licensed contractors that meet the prequalification standards. If any licensed contractor submits a statement of qualifications but is not selected as a qualified bidder, the political subdivision shall supply a written statement of the reason or reasons why the contractor failed to meet prequalification standards.

(iv) Any licensed contractor that fails the prequalification stage can appeal any such determination to the governing board within seven (7) days after transmittal of the prequalification results to contest the determination. If the governing board sustains the decision that a contractor fails to meet prequalification standards, it shall state its reason or reasons for the record. A governing board decision concerning prequalification may be appealed to the public works contractors license board no more than fourteen (14) days following any decision on appeal made by the governing board. The public works contractors license board shall decide any such appeal within thirty-five (35) days of the filing of a timely appeal. The public works contractors license board shall allow participation, written or oral, by the appealing contractor and the political subdivision, either by employing a hearing officer or otherwise. The public works contractors license board shall not substitute its judgment for that of the political subdivision, limiting its review to determining whether the decision of the governing board is consistent with the announced prequalification standards, whether the prequalification standards comport with the law and whether the governing board's decision is supported by the entirety of the record. The decision of the public works contractors license board shall be written and shall state the reason or reasons for the decision. Category B prequalification procedures that are appealed shall be stayed during the pendency of the prequalification appeal until the public works contractors license board completes its review, but in no instance more than forty-nine (49) days after the appellate decision of the governing board regarding prequalification. Any licensed public works contractor affected by a decision on appeal by the public works contractors license board may, within twenty-eight (28) days of the

final decision, seek judicial review as provided by chapter 52, title 67, Idaho Code.

(v) Following the conclusion of the prequalification administrative procedures, the bidding stage shall proceed by the setting of a time, date and place for the public opening of bids. In circumstances involving prequalified prime contractors, a notice soliciting bids shall be transmitted to prequalified bidders at least fourteen (14) days before the date of opening the bids. In circumstances involving prequalified specialty or subordinate contractors, the notice soliciting bids shall be published in the same manner applicable to category A bids. The notice shall succinctly describe the project to be constructed. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request and payment of a reasonable plan copy fee by any eligible bidder.

(vi) Written objections to specifications or bidding procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which bids are scheduled to be opened.

(vii) All category B bids shall be presented or otherwise delivered under sealed cover to the clerk or other authorized agent of the political subdivision designated by the instructions to bidders with a concise statement marked on the outside generally identifying the project to which the bid pertains.

(viii) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

(A) Cash;

(B) A cashier's check made payable to the political subdivision;

(C) A certified check made payable to the political subdivision; or

(D) A bidder's bond executed by a qualified surety company, made payable to the political subdivision.

(ix) Any category B bid received by a political subdivision may not be withdrawn after the date and time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public by the governing board or the board's designee at a designated place and time. The governing board's designee shall thereafter compile and submit to the governing board for award or, if authorized, approve the award. If identical bids are received, the governing board may choose the bidder it prefers. If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision, in the sole discretion of the political subdivision, and the proceeds shall be deposited in a designated fund out of which the expenses for procuring substitute performance are paid.

(x) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the qualified bidder submitting the next lowest responsive bid. If the governing board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security, if forfeited, shall be applied by the political subdivision to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security.

(xi) In its discretion, the governing board may reject all bids presented and re-bid, or the governing board may, after finding it to be a fact, pass a resolution declaring that the project sought to be accomplished by the expenditure can be performed more economically by purchasing goods and services on the open market. If no bids are received, the governing board may make the expenditure without further competitive bidding procedures.

(xii) If the governing board of any political subdivision chooses to award a competitively bid contract involving the procurement of

public works construction to a bidder other than the apparent low bidder, the political subdivision shall declare its reason or reasons on the record and shall communicate such reason or reasons in writing to all persons who have submitted a competing bid.

(xiii) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor. After completion of the review process, the political subdivision may proceed as it deems to be in the public interest.

History.

I.C., § 67-2805, as added by 2005, ch. 213, § 37, p. 637; am. 2005, ch. 295, § 2, p. 935; am. 2017, ch. 197, § 5, p. 482.

STATUTORY NOTES

Cross References.

Public works contractors license board, § 54-1905.

Amendments.

The 2017 amendment, by ch. 197, deleted former subsection (1) concerned with notice of intent to procure, and redesignated subsequent subsections accordingly; in present subsection (1), substituted “at or in excess of fifty thousand dollars (\$50,000)” for “in excess of twenty-five thousand dollars (\$25,000)” and “two hundred thousand dollars (\$200,000)” for “one hundred thousand dollars (\$100,000)” in the introductory paragraph; in paragraph (1)(d), substituted “a designee of the governing board who shall present the lowest responsive bid to the governing board for approval or, if authorized, approve the bid” for “governing board-authorized official which” in the first sentence, and inserted the present second sentence; substituted “two hundred thousand

dollars (\$200,000)” for “one hundred thousand dollars (\$100,000)” in the first sentence of present subsection (2), substituted “project” for “expenditure” in paragraphs (2)(a)(iii) and (2)(b)(vii), added “or, if a designee is authorized, for approval of the award” in paragraph (2)(a)(v); and made minor stylistic changes.

CASE NOTES

Award.

Prior experience.

Award.

Under Category A, as set forth in subsection (3)(a), the reason for awarding a public works contract to someone other than the apparent low bidder must be either that the original party was the apparent, but not the actual, low bidder, that the original party did not comply with administrative requirements, or that the original party does not currently hold the requisite license. *Hillside Landscape Constr., Inc. v. City of Lewiston*, 151 Idaho 750, 264 P.3d 388 (2011).

Prior Experience.

Because a city did not follow the Category B procedures set forth in paragraph (3)(b) to prequalify bidders, but instead proceeded under Category A in paragraph (3)(a), when it sought bids to replace a golf course irrigation system, it could not reject a bid on the ground that the contractor lacked sufficient experience for the project. Lack of prior experience was not a permissible reason under Category A for not awarding a public works contract to the apparent low bidder. *Hillside Landscape Constr., Inc. v. City of Lewiston*, 151 Idaho 750, 264 P.3d 388 (2011).

Decisions Under Prior Law

Consideration.

Improvements as consideration.

Personal services.

Consideration.

Where improvements constituted the consideration for a lease, the fact that those improvements might not have been constructed in accordance with statutory requirements did not destroy the consideration for the lease. *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

Improvements as Consideration.

Since the construction of the improvements was contracted and paid for by a private corporation, there was no expenditure of county funds even though the improvements were the consideration for the lease and were in lieu of rent, and the fact that the improvements might not have been constructed in accordance with statutory requirements did not destroy the consideration for the lease. *Hansen v. Kootenai County Bd. of Comm'rs*, 93 Idaho 655, 471 P.2d 42 (1970).

Personal Services.

The term “personal services” encompasses at a minimum those services which require some special skill or technical learning; it is irrelevant whether the contract would be performed by more than one person, or that there are others capable of doing the work. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

A contract providing for the appraisal of real property involves such “personal services” as require special skill or technical learning and is exempt from public bidding requirements; accordingly, contracts, between county and independent appraiser for revaluation of real property were not void even though not granted through public bidding. *Coeur d'Alene Lakeshore Owners & Taxpayers, Inc. v. Kootenai County*, 104 Idaho 590, 661 P.2d 756 (1983).

§ 67-2806. Procuring services or personal property. — (1) When a political subdivision contemplates an expenditure to purchase or lease personal property or to procure services, other than personal property or services excluded pursuant to section 67-2803, Idaho Code, valued at or in excess of fifty thousand dollars (\$50,000) but not to exceed one hundred thousand dollars (\$100,000), the procurement procedures of this subsection shall apply.

(a) The solicitation for bids shall be supplied to no fewer than three (3) vendors by written means, either by electronic or physical delivery. The solicitation shall describe the personal property or services to be purchased or leased in sufficient detail to allow a vendor dealing in such goods or services to understand what the political subdivision seeks to procure.

(b) The solicitation for bids shall describe the electronic or physical delivery method or methods authorized to submit a bid, the date and time by which a bid proposal must be received by the clerk, secretary or other authorized official of the political subdivision, and shall provide a reasonable time to respond to the solicitation, provided that except in the event of an emergency, such time shall not be less than three (3) business days.

(c) Written objections to specifications or bid procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least one (1) business day before the date and time upon which bids are scheduled to be received.

(d) When written bids have been received, by either physical or electronic delivery, they shall be compiled and submitted to the governing board or governing board-authorized official which shall approve the responsive bid proposing the lowest procurement price or reject all bids and publish notice for bids, as before.

(e) If the political subdivision finds that it is impractical or impossible to obtain three (3) bids for the proposed procurement, the political subdivision may acquire the property in any manner the political

subdivision deems best from a qualified vendor quoting the lowest price. When fewer than three (3) bids are considered, a description of the efforts undertaken to procure at least three (3) bids shall be documented by the political subdivision and such documentation shall be maintained for at least six (6) months after any such procurement is made. If two (2) or more bids are the same and the lowest responsive bids, the authorized decision maker may accept the one (1) it chooses.

(2) When a political subdivision contemplates an expenditure to purchase or lease personal property or to procure services, other than personal property or services excluded pursuant to [section 67-2803, Idaho Code](#), valued in excess of one hundred thousand dollars (\$100,000), the procurement procedures of this subsection shall apply.

(a) The purchase or lease shall be made pursuant to an open competitive sealed bid process with the procurement to be made from the qualified bidder submitting the lowest bid price complying with bidding procedures and meeting the specifications for the goods and/or services sought to be procured.

(b) The request for bids shall set a date, time and place for the opening of bids. Two (2) notices soliciting bids shall be published in the official newspaper of the political subdivision. The first notice shall be published at least two (2) weeks before the date for opening bids, with the second notice to be published in the succeeding week at least seven (7) days before the date that bids are scheduled to be opened. The notice shall succinctly describe the personal property and/or service to be procured. Copies of specifications, bid forms, bidder's instructions, contract documents, and general and special instructions shall be made available upon request by any interested bidder.

(c) Written objections to specifications or bidding procedures must be received by the clerk, secretary or other authorized official of the political subdivision at least three (3) business days before the date and time upon which bids are scheduled to be opened.

(d) If the political subdivision deems it is in the political subdivision's best interest, it may require the bidder to provide bid security in an amount equal to at least five percent (5%) of the amount bid. If required, a bid shall not be considered unless one (1) of the forms of bidder's

security is enclosed with it, and unless the bid is submitted in a form which substantially complies with the form provided by the political subdivision. The political subdivision may require that the bid security be in one (1) of the following forms:

- (i) Cash;
 - (ii) A cashier's check made payable to the political subdivision;
 - (iii) A certified check made payable to the political subdivision; or
 - (iv) A bidder's bond executed by a qualified surety company, made payable to the political subdivision.
- (e) Any bid received by the political subdivision may not be withdrawn after the time set in the notice for opening of bids. When sealed bids have been received, they shall be opened in public at a designated place and time, thereafter to be compiled and submitted to the governing board for award or, if a designee is authorized, for approval of the award.
- (f) If the successful bidder fails to execute the contract, the amount of his bidder's security may be forfeited to the political subdivision at the sole discretion of the governing board and thereafter the proceeds may be deposited in a designated fund out of which the reasonable expenses for procuring substitute performance are paid.
- (g) The political subdivision may, on the refusal or failure of the successful bidder to execute the contract, award the contract to the next lowest qualified bidder. If the governing board awards the contract to the next lowest qualified bidder, the amount of the lowest qualified bidder's security may be applied by the political subdivision to the difference between the lowest responsive bid and the next lowest responsive bid, and the surplus, if any, shall be returned to the lowest bidder if cash or check is used, or to the surety on the bidder's bond if a bond is used, less reasonable administrative costs not to exceed twenty-five percent (25%) of the amount of the bidder's security.
- (h) In its discretion, the governing board or its designee may reject all bids presented and re-bid or, after finding it to be a fact, the governing board may pass a resolution declaring that the subject goods or services can be procured more economically on the open market. If two (2) or more bids are the same and the lowest responsive bids, the governing

board or its designee may accept the one (1) it chooses. In its discretion, the governing board of a political subdivision may preauthorize the purchase of equipment at a public auction.

(i) If the governing board of any political subdivision chooses to award a competitively bid contract involving the procurement of personal property or services to a bidder other than the apparent low bidder, the political subdivision shall declare its reason or reasons on the record and shall communicate such reason or reasons in writing to all who have submitted a competing bid.

(j) If any participating bidder objects to such award, such bidder shall respond in writing to the notice from the political subdivision within seven (7) calendar days of the date of transmittal of the notice, setting forth in such response the express reason or reasons that the award decision of the governing board is in error. Thereafter, staying performance of any procurement until after addressing the contentions raised by the objecting bidder, the governing board shall review its decision and determine whether to affirm its prior award, modify the award, or choose to re-bid, setting forth its reason or reasons therefor. After completion of the review process, the political subdivision may proceed as it deems to be in the public interest.

History.

I.C., § 67-2806, as added by 2005, ch. 213, § 37, p. 637; am. 2017, ch. 197, § 6, p. 482.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 197, rewrote the introductory paragraph of subsection (1), which formerly read: “When a political subdivision contemplates an expenditure to purchase or lease personal property or to procure services, other than those services excluded pursuant to [section 67-2803, Idaho Code](#), valued in excess of twenty-five thousand dollars (\$ 25,000) but not to exceed fifty thousand dollars (\$ 50,000), the procurement procedures of this subsection (1) shall apply,” and substituted “two (2) or more bids” for “two (2) or more price quotations” in the last sentence in

paragraph (1)(e); in the introductory paragraph of subsection (2), substituted “personal property or services” for “those services” and “one hundred thousand dollars (\$100,000)” for “fifty thousand dollars (\$50,000),” and added “for award or, if a designee is authorized, for approval of the award” at the end of paragraph (2)(e), and inserted “or its designee” twice in paragraph (2)(h).

Compiler’s Notes.

Sections 4 and 5 of S.L. 2015, ch. 15 provide: “Section 4. Procurement Flexibility for School Districts. It is the intent of the Legislature that school districts shall have the power to procure telecommunication services, including high-bandwidth connectivity, Internet access, and purchases of equipment, and other related services, as necessary to provide for the continuation of services formerly provided by the Idaho Education Network, with the funds appropriated in Section 2 of this act. All procurement shall be in accordance with Idaho Code governing procurement for an emergency pursuant to [Section 67-2806 \(1\)\(b\), Idaho Code](#). Provided however, that when a school district determines that the dollar limitations provided for in [Section 67-2806\(2\), Idaho Code](#), apply, the school district may apply the provisions of [Section 67-2806\(1\)\(a\) through \(e\), Idaho Code](#), allowing certain exemptions for an emergency under [Section 67-2806\(1\)\(b\), Idaho Code](#), when the school district finds that conditions exist that make it impractical or impossible to delay contracting for services or to engage multiple bidders. Although not limiting, the following school districts most likely to make such a determination, due to the projected cost of the services, are the following: Boundary County School District, Coeur d’Alene School District, Fremont County Joint School District, Garden Valley School District, Lake Pend Oreille School District, Lakeland School District, Mountain View School District, Post Falls School District, Salmon River Joint School District and Teton County School District.

“Section 5. Reporting Requirements. The superintendent shall collect information from the school districts and report back to the Legislature and to the Governor as to the level of service purchased with the funds provided for in Section 2 of this act, the dollar amounts distributed to each of the school districts, a list of the school districts using the emergency procurement procedures authorized in Section 4 of this act, and information

relating to students, by school district, who will be able to continue online classes through the current school year, of which classes were previously offered through the Idaho Education Network or any other online providers. This information shall be provided to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Chairmen of the Senate and House Education Committees, the Chairmen of the Joint Finance-Appropriations Committee, and to the Governor, at the end of each month beginning in March continuing through July 2015.”

§ 67-2806A. Request for proposal. — (1) A political subdivision may utilize a request for proposal process as set forth in this section as an alternative to the competitive bidding process required by section 67-2806, Idaho Code, when the political subdivision contemplates a procurement for goods or services for which:

(a) Fixed specifications might preclude the discovery of a cost-effective solution; (b) A specific problem is amenable to several solutions; or (c) Price is not the sole determining factor for selection.

(2) Factors that may be considered in the evaluation of vendors in a request for proposal process include, but are not limited to: (a) An innovative solution that is offered; (b) Unique product features;

(c) Price;

(d) Vendor experience in the market; (e) Financial stability of a vendor; (f) Differences among vendors in their ability to perform contract requirements in a timely or efficient manner; (g) Ability to meet product specifications; (h) Product quality;

(i) Product performance records; (j) Past performance by a vendor; (k) Future product maintenance or service requirements; and (l) Product warranties.

(3) At a minimum, a request for proposal shall state the instructions of the process, the scope of work for the goods or services contemplated, the selection criteria, contract terms and the scoring methodology applying relative weights to factors considered.

(4) Notification, solicitation and consideration of contests concerning the award of procurement pursuant to a request for proposal shall be in accordance with the minimum requirements established in [section 67-2806, Idaho Code](#), subject to the selection criteria established at the outset of each such procurement. Records compiled in the scoring process shall be made available for public inspection when a procurement recommendation is made to the governing board.

History.

I.C., § 67-2806A, as added by 2017, ch. 197, § 7, p. 482.

§ 67-2807. Cooperative purchasing. — With the approval of its governing board, a political subdivision may participate in cooperative purchasing agreements with the state of Idaho, other Idaho political subdivisions, other government entities, or associations thereof. Political subdivisions may also participate in cooperative purchasing programs established by any association that offers its goods or services as a result of competitive solicitation processes. Goods or services procured by participation in such cooperative agreements or programs shall be deemed to have been acquired in accordance with the requirements of this chapter.

History.

I.C., § 67-2807, as added by 2019, ch. 67, § 2, p. 161.

STATUTORY NOTES

Prior Laws.

Former § 67-2807, Joint purchasing agreements — Not-for-profit associations, which comprised **I.C., § 67-2807**, as added by 2005, ch. 213, § 37, p. 637, was repealed by S.L. 2019, ch. 67, § 1, effective July 1, 2019.

§ 67-2808. Emergency expenditures and sole source expenditures. —

(1) Emergency expenditures.

(a) The governing board of a political subdivision may declare that an emergency exists and that the public interest and necessity demand the immediate expenditure of public money if:

- (i) There is a great public calamity, such as an extraordinary fire, flood, storm, epidemic, or other disaster;
- (ii) It is necessary to do emergency work to prepare for the national or local defense; or
- (iii) It is necessary to do emergency work to safeguard life, health, or property.

(b) Upon making the declaration of emergency, any sum required in the emergency may be expended without compliance with formal bidding procedures.

(2) Sole source expenditures.

(a) The governing board of a political subdivision may declare that there is only one (1) vendor if there is only one (1) vendor for the public works construction, services, or personal property to be acquired. For purposes of this subsection, only one (1) vendor shall refer to situations where there is only one (1) source reasonably available and shall include, but not be limited to, the following situations:

- (i) Where public works construction, services, or personal property is required to respond to a life-threatening situation or a situation that is immediately detrimental to the public welfare or property;
- (ii) Where the compatibility of equipment, components, accessories, computer software, replacement parts, or service is the paramount consideration;
- (iii) Where a sole supplier's item is needed for trial use or testing;
- (iv) The purchase of mass-produced movies, videos, books, or other copyrighted materials;

- (v) The purchase of public works construction, services, or personal property for which it is determined there is no functional equivalent;
 - (vi) The purchase of public utility services;
 - (vii) The purchase of products, merchandise, or trademarked goods for resale at a political subdivision facility; or
 - (viii) Where competitive solicitation is impractical, disadvantageous, or unreasonable under the circumstances.
- (b) Upon making the declaration that there is only one (1) vendor for public works construction, services, or personal property, unless the public works construction, services, or personal property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property, notice of a sole source procurement shall be published in the official newspaper of the political subdivision at least fourteen (14) calendar days prior to the award of the contract.
- (c) A sole source declaration made pursuant to the provisions of this subsection may be made without an emergency declaration under subsection (1) of this section.

History.

I.C., § 67-2808, as added by 2005, ch. 213, § 37, p. 637; am. 2013, ch. 344, § 2, p. 928; am. 2019, ch. 115, § 1, p. 440.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 344, substituted “public works construction, services or personal property” for “property” throughout the section.

The 2019 amendment, by ch. 115, added paragraph (2)(c).

CASE NOTES

“Emergency” Construed.

The need for construction of a courthouse annex to provide quarters for a new district judge created by the legislature was not an emergency as defined in this section. *Reynolds Constr. Co. v. Twin Falls County*, 92 Idaho 61, 437 P.2d 14 (1968).

§ 67-2809. Legislative intent — Public works — Agreements — Savings — Severability. — (1) It is the intent of the legislature to provide for the efficient and cost-effective procurement of goods and services by political subdivisions as market participants.

(2) Notwithstanding any other provision found in chapter 10, title 44, **Idaho Code, chapter 28**, title 67, Idaho Code, and chapter 57, title 67, Idaho Code, the following shall apply:

(a) This act shall be known as the “Open Access to Work Act.”

(b) For purposes of this section, the following terms have the following meanings:

(i) “Political subdivision” means the state of Idaho, or any county, city, school district, sewer district, fire district or any other taxing subdivision or district of any public or quasi-public corporation of the state, or any agency thereof, or with any other public board, body, commission, department or agency, or officer or representative thereof;

(ii) “Public works” shall have the same meaning as that provided for “public works construction” in **section 54-1901, Idaho Code**.

(c)(i) Except as provided in subsection (2)(c)(ii) of this section or as required by federal or state law, the state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works shall not require that a contractor, subcontractor, material supplier or carrier engaged in the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works pay its employees:

1. A predetermined amount of wages or wage rate; or

2. A type, amount or rate of employee benefits.

(ii) Subsection (2)(c)(i) of this section shall not apply when federal law requires the payment of prevailing or minimum wages to persons working on projects funded in whole or in part by federal funds.

(d) The state or any political subdivision that contracts for the construction, alteration, equipping, furnishing, maintenance, repair or improvement of public works or obligates funds pursuant to such a contract shall ensure that neither the awarding governmental entity nor any construction manager acting on the governmental entity's behalf shall:

(i) In its bid documents, specifications, project agreements or other controlling documents for a public works construction contract, require or prohibit bidders, offerors, contractors, subcontractors or material suppliers to enter into or adhere to prehire agreements, project labor agreements, collective bargaining agreements or any other agreement with one (1) or more labor organizations on the same or other related construction projects;

(ii) Discriminate against, or treat differently, bidders, offerors, contractors, subcontractors or material suppliers for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one (1) or more labor organizations on the same or other related construction projects; or

(iii) Discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin unless permitted by an exception described in [section 67-5909A, Idaho Code](#).

Nothing in subsection (2)(d) of this section shall prohibit bidders, offerors, contractors, subcontractors or material suppliers from voluntarily entering into agreements described in subparagraph (i) of this paragraph.

(e) Any interested party, which shall include a bidder, offeror, contractor, subcontractor or taxpayer, shall have standing to challenge any bid award, specification, project agreement, controlling document, grant or cooperative agreement that violates the provisions of this section, and such interested party shall be awarded costs and attorney's fees in the event that such challenge prevails.

(f) The provisions of this section apply to any contract executed after the effective date of this act.

(3) This act does not prohibit or interfere with the rights of employers or other parties to enter into agreements or engage in any other activity protected by the national labor relations act, [29 U.S.C. section 151, et seq.](#)

(4) The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

History.

[I.C., § 67-2809](#), as added by 2012, ch. 312, § 3, p. 860; am. 2020, ch. 331, § 3, p. 963.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 331, added paragraph (2)(d)(iii).

Compiler's Notes.

The term “this act” in paragraph (2)(a) and subsections (3) and (4) refers to S.L. 2012, Chapter 312, which is codified as §§ 44-2007, 44-2008, and this section.

The phrase “the effective date of this act” in paragraph (2)(f) refers to the effective date of S.L. 2012, Chapter 312, which was effective July 1, 2012.

Chapter 29

IDAHO STATE POLICE

Sec.

67-2901. Idaho state police created — Director — Divisions — Powers and duties — Failure of peace officers to obey orders, misdemeanor — Deputies — Compensation and powers.

67-2901A. Authority to conduct safety inspections and compliance reviews of motor carriers — Adoption of rules — Penalty.

67-2901B. Inspection of motor carriers — Exemptions — Certification of repair — Compliance review — Penalties.

67-2902. Director and deputies — Powers of police officers.

67-2903. State police division established. [Repealed.]

67-2904. Administrator — Appointment, term, salary.

67-2905. Jurisdiction.

67-2906. Cooperation and exchange of information.

67-2907. Jailors to receive prisoners from Idaho state police.

67-2908. Salaries and expenses — Source of payment.

67-2909 — 67-2911. [Repealed.]

67-2912. State victim notification fund.

67-2913. Search and rescue fund.

67-2913A. Snowmobile search and rescue fund — Advisory committee.

67-2914. Idaho law enforcement fund established.

67-2915. Statistical report of malicious harassment crimes.

67-2916. Reports of murders.

67-2917. Hazardous waste.

67-2918. Penalties.

67-2919. Testing and retention of sexual assault evidence kits.

67-2920. Blue Alert system.

67-2926 — 67-2931. [Amended and Redesignated.]

§ 67-2901. Idaho state police created — Director — Divisions — Powers and duties — Failure of peace officers to obey orders, misdemeanor — Deputies — Compensation and powers. — (1) There is hereby created the Idaho state police. The Idaho state police shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

(2) The governor, with the advice and consent of the senate, shall appoint a director of the Idaho state police who shall serve at the pleasure of the governor. The director shall receive such salary as fixed by the governor.

(3) The Idaho state police shall be composed of such divisions as may be established by law and other administrative units as may be established by the director for the proper and efficient administration of the powers and duties assigned to the director or the state police. The director shall appoint, subject to the approval of the governor, an administrator for each division within the state police.

(4) The director shall exercise all of the powers and duties necessary to carry out the proper administration of the state police, and may delegate duties to employees and officers of the state police.

(5) The Idaho state police shall have power to:

(a) Enforce all of the penal and regulatory laws of the state, to preserve order, and exercise any and all powers, duties and authority of any sheriff or other peace officer anywhere in the state of Idaho, in the same manner and with like authority as the sheriffs of the counties; said department may employ from time to time, to carry out any of the provisions of this subsection, such deputies or special deputies as may be deemed, by the governor of the state of Idaho, necessary to carry out these duties and powers, and deputies shall have power to deputize other persons as deputies when necessary; said department may call into the police service of the state any and all peace officers of the state, of any city, or of any county, and may deputize private citizens, when deemed necessary by the governor of the state, to preserve order and enforce law in any extraordinary emergency when the governor shall have declared, by order

in writing, the existence of such extraordinary emergency; the governor shall designate by order such peace officers or private persons as are to be called into the service of the state, and when such peace officers or deputized citizens are so called into the police service of the state such officers shall act under the direction of the director of the state police in such manner as may be directed and ordered by the governor; failure on the part of any such peace officer of the state, or person so deputized, to so act and obey such orders shall constitute a misdemeanor; the governor shall fix the compensation of such deputies;

(b) Prevent and detect crime and apprehend criminals and maintain order;

(c) Require all persons using the highways in the state to do so carefully, safely, and with the exercise of care for the persons, property and safety of others;

(d) Safeguard and protect the surface and other physical portions of the state highways and enforce any laws for highway safety;

(e) Enforce federal statutes and regulations relating to motor carrier safety and hazardous materials for interstate carriers;

(f) Enforce Idaho statutes and rules of the Idaho state police applicable to motor carriers;

(g) Enforce all of the laws of the state enacted for the identification, inspection and transportation of livestock and all laws of the state designed to prevent the theft of livestock;

(h) Regulate traffic on all highways and roads in the state, including the authority to temporarily close or restrict the use of any highway or road whenever the closure or restriction of the use is deemed necessary for the safety of the public;

(i) Perform all of the duties and exercise all of the powers of peace officers vested in the director of the Idaho state police;

(j) Execute and serve any warrant of arrest or search warrant issued by proper authority of the state, according to the tenor thereof, in any part of the state;

(k) Arrest without warrant, any person committing or attempting to commit in their presence or view a breach of the peace or any other

violation of any of the laws of the state;

(l) Members of the Idaho state police shall be subject to the call of the governor and are empowered to cooperate with any other department or authority of the state, with counties and municipalities, or any locality in detecting crime, apprehending criminals and preserving law and order throughout the state; but the Idaho state police shall not be used as a posse in any municipality, except when ordered by the governor to do so; provided nothing herein contained shall be construed to vest direction or control over any sheriff, policeman, marshal or constable in the Idaho state police or any employer or officer thereof;

(m) Each member of the Idaho state police shall take and subscribe to an oath of office to support the constitution and laws of the United States and the state of Idaho, and to honestly and faithfully perform the duties imposed upon him under the provisions of the laws of Idaho as a member of the Idaho state police. The oath shall be filed with the director; and

(n) Enter into contractual agreements to reimburse the Idaho state police for services provided to private entities if it is deemed necessary to enforce the law or ensure public safety when those services or resources are beyond the usual and customary services provided by the Idaho state police.

(6) The director shall operate and supervise a forensic laboratory which will provide to state and local agencies having responsibility for enforcement of the penal laws of this state assistance in the collection, preservation and analysis of evidence in criminal cases. Idaho state police forensic services resources including, but not limited to, equipment, instrumentation, facilities and supplies may be used only by authorized employees or approved subcontractors of Idaho state police forensic services.

(7) The director shall provide security and protection for the governor and the governor's immediate family to the extent and in the manner the governor and the director deem adequate and appropriate.

(8) At the written direction of the governor or the director, the director shall provide security and protection for the lieutenant governor and the

lieutenant governor's immediate family to the extent and in the manner the lieutenant governor and the director deem adequate and appropriate.

(9) The director shall provide security and protection for both houses of the legislature while in session as in the opinion of the speaker of the house of representatives and the president pro tempore of the senate and the director deem necessary.

(10) The director shall provide security and protection for the supreme court and the court of appeals while they are in session, and at their places of work, as the chief justice and the director deem necessary.

(11) The director may award to an officer, upon retirement, that officer's badge, duty weapon and handcuffs, providing that a committee of three (3) of the officer's peers certifies to the director that the retiring officer has served meritoriously for a minimum of fifteen (15) years and should therefore be so honored.

(12) The director, within the limits of any appropriation made available for such purposes, shall for such Idaho state police:

(a) Establish such ranks, grades and positions as shall appear advisable and designate the authority and responsibility in each such rank, grade and position;

(b) Appoint such personnel to such rank, grade and position as are deemed by him to be necessary for the efficient operation and administration of the Idaho state police, and only those applicants shall be appointed or promoted who best meet the prescribed standards and prerequisites; provided however, that all employees shall be selected in the manner provided for in chapter 53, title 67, Idaho Code, and shall be probationers and on probation for a period of one (1) year from the date of appointment;

(c) Formulate and place in effect such rules for the Idaho state police as from time to time appear to him advisable;

(d) Prescribe by official order the uniform and equipment of the employees in the Idaho state police;

(e) Station employees in such localities as he shall deem advisable for the enforcement of the laws of the state;

(f) Have purchased, or otherwise acquired, by the purchasing agent of the state, motor vehicle equipment and all other equipment and commodities deemed by him essential for the efficient performance of the duties of the Idaho state police and purchase and install approved mechanical devices and equipment for the rapid transmission and broadcasting of information relative to crime, apprehension of criminals and the administration of the business of the Idaho state police.

(13)(a) The director shall issue to every eligible police officer member of the Idaho state police, as defined in [section 59-1303\(3\), Idaho Code](#), and pursuant to the contract provided for by the personnel group insurance administrator in the department of administration, a term group life insurance certificate in the face amount of fifty thousand dollars (\$50,000) on the life of such members. Said insurance certificate shall set forth the name or names of such beneficiary or beneficiaries as the insured may name or designate.

(b) Any eligible person entering the employ of the Idaho state police as an active police officer after the effective date of this act shall be insured as other members of the state police immediately upon taking the oath of office.

(c) Every member of the Idaho state police, upon termination of active duty or permanent release, may surrender said certificate to the head of the state police, or, at the person's option, may convert the insurance in accordance with the provisions of the contract, and no further premiums shall be paid on said policy by the state of Idaho.

(d) The director is hereby directed to hereafter include in the budget of the Idaho state police an amount sufficient to pay the annual costs accruing with respect to policies of insurance purchased under the provisions of this chapter.

(e) The premiums on the insurance herein provided for are to be paid one-half (1/2) by the employee and one-half (1/2) by the state. The director is hereby authorized to make a monthly deduction on the payroll of the amount due from each employee under this chapter.

(14) Nothing in this section shall affect the duties of the sheriff as described in [section 31-2202, Idaho Code](#), or the primary duty, described in

section 31-2227, Idaho Code, of the sheriff and prosecuting attorney of each of the several counties to enforce all the penal provisions of any and all statutes of this state.

History.

1919, ch. 8, § 31, p. 43; C.S., § 332; am. 1923, ch. 152, § 1, p. 221; I.C.A., § 65-2801; am. 1963, ch. 91, § 1, p. 288; am. 1970, ch. 217, § 1, p. 616; am. 1971, ch. 173, § 19, p. 812; am. 1974, ch. 27, § 2, p. 811; am. 1982, ch. 30, § 1, p. 59; 1982, ch. 95, § 139, p. 185; am. 1986, ch. 215, § 1, p. 549; am. 1988, ch. 47, § 1, p. 54; am. 1995, ch. 116, § 1, p. 386; am. 2000, ch. 469, § 4, p. 1450; am. 2008, ch. 85, § 2, p. 223; am. 2012, ch. 272, § 1, p. 767; am. 2013, ch. 175, § 1, p. 404; am. 2015, ch. 67, § 1, p. 179; am. 2015, ch. 232, § 1, p. 728.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Amendments.

The 2008 amendment, by ch. 85, added subsection (9) and redesignated the subsequent subsections accordingly.

The 2012 amendment, by ch. 272, added subsection (8) and renumbered the subsequent subsections accordingly.

The 2013 amendment, by ch. 175, added the last sentence in subsection (6).

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 67, added “including the authority to temporarily close or restrict the use of any highway or road whenever the closure or restriction of the use is deemed necessary for the safety of the public” at the end of paragraph (5)(h).

The 2015 amendment, by ch. 232, added paragraph (5)(n).

Compiler's Notes.

The reference in subsection (13)(b) of this section to “the effective date of this act” is to March 14, 1995, since present subsections (12) and (13) of this section were added by S.L. 1995, ch. 116 which became effective March 14, 1995.

For more on the Idaho office of group insurance, referred to in paragraph (13)(a), see *<http://ogi.idaho.gov>*.

Section 21 of S.L. 1971, ch. 173 read: “If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this are severable.”

Effective Dates.

Section 2 of S.L. 1923, ch. 152 declared an emergency. Approved March 13, 1923.

Section 2 of S.L. 1970, ch. 217 declared an emergency. Approved March 16, 1970.

Section 22 of S.L. 1971, ch. 173 provided the act should take effect from and after July 1, 1971.

Section 2 of S.L. 1982, ch. 30 declared an emergency. Approved March 4, 1982.

Section 2 of S.L. 2012, ch. 272 declared an emergency. Approved April 3, 2012.

CASE NOTES

Cited *Ingard v. Barker*, 27 Idaho 124, 147 P. 293 (1915); *Grayot v. Summers*, 75 Idaho 125, 269 P.2d 765 (1954); *State v. Hahn*, 92 Idaho 265, 441 P.2d 714 (1968); *State v. Haynes*, 159 Idaho 36, 355 P.3d 1266 (2015).

OPINIONS OF ATTORNEY GENERAL

POST Council.

The director of law enforcement [Idaho state police] is the appointing authority for the staff of the peace officer standards and training (POST) Academy, since the POST Council is created within the department and has no specific authority to hire and fire employees. Therefore, the director is the appointing authority by operation of § 67-2405. OAG 90-5.

§ 67-2901A. Authority to conduct safety inspections and compliance reviews of motor carriers — Adoption of rules — Penalty. — (1) The director of the Idaho state police shall have responsibility for ensuring that safety inspections and compliance reviews are conducted and that motor carriers are inspected for compliance with federal motor carrier safety and hazardous materials regulations and for compliance with applicable Idaho laws and such rules as are adopted pursuant to this section.

(2) The director shall have the authority and is directed to promulgate rules to provide for the safe operation of motor carriers and for the inspection of records, books, papers and documents relating to safety management systems or programs and compliance with the federal safety fitness standard. The director is further authorized to adopt temporary rules as necessary.

(3) Any person who violates or fails to comply with any rule promulgated by the director under the provisions of this section is guilty of a misdemeanor.

History.

I.C., § 67-2901A, as added by 1999, ch. 383, § 19, p. 27; am. 2000, ch. 469, § 5, p. 1450.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes.

For more on the federal safety fitness standard, referred to in subsection (2), see <https://www.ecfr.gov/cgi-bin/text-dx?SID=ff6de4c1951028b844773344a009e579&mc=true&node=se49.5.38515&rgn=div8>.

§ 67-2901B. Inspection of motor carriers — Exemptions — Certification of repair — Compliance review — Penalties. — (1) All motor carriers, except those exempted under the provisions of subsection (2) of this section, are subject to compliance review and inspection by authorized state police employees for compliance with federal motor carrier safety and hazardous materials regulations and for compliance with applicable Idaho laws and rules promulgated by the director pursuant to the provisions of section 67-2901A, Idaho Code. A motor carrier shall submit any vehicle to a safety inspection when requested to do so by an authorized state police employee. Such inspections shall comply, to the extent possible, with national and industry standards for truck inspections and truck safety as adopted by the commercial vehicle safety alliance. A written inspection report shall be provided to the owner, operator or agent of the vehicle following any inspection review pursuant to this section.

(2) The following intrastate motor carriers shall be exempt from safety inspections and compliance reviews:

(a) Motor vehicles employed solely in transporting school children and teachers to or from school or to and from approved school activities, when the motor vehicles are either:

(i) Wholly owned and operated by such school; or

(ii) Leased or contracted by such school and the motor vehicle is not used in the furtherance of any other commercial enterprise; or

(b) Taxicabs or other motor vehicles performing a licensed or franchised taxicab service, having a seating capacity of not more than seven (7) passengers within twenty-five (25) miles of the boundaries of the licensing or franchising jurisdiction; or

(c) Motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of hotel patrons between hotels and local railroads or airports or other common carrier stations; or

(d) Motor vehicles controlled and operated by any farmer when used in the transportation of his farm equipment or in the transportation of supplies to his farm; or

- (e) Motor vehicles used exclusively in the distribution of newspapers; or
- (f) Transportation of persons or property by motor vehicle at an airport when incidental to transportation by aircraft or other transportation in substitution for scheduled airline service when the carrier cannot provide the scheduled service because of weather and/or mechanical conditions and the transportation is arranged for and paid by the affected airlines; or
- (g) Transportation of persons and/or property, including mobile and modular houses manufactured with wheels and undercarriage as part of the substructure, but not transportation of other houses, buildings or structures within a municipality or territory contiguous to such municipality if such operation outside such municipality be a part of a service maintained within the limits of the municipality with the privilege of transfer of passengers to vehicles within the municipality without additional fare; or
- (h) The transportation of agricultural products, including fresh fruits and vegetables, livestock, livestock feed or manure at any time of the year; or
- (i) Motor-propelled vehicles for the sole purpose of carrying United States mail or property belonging to the United States; or
- (j) Motor carriers transporting products of the forest at any time of the year; provided however, that logging trucks are subject to the Idaho division of building safety's administrative rules relating to Idaho minimum safety standards and practices for logging trucks during transportation on Idaho's public highways, which rules shall be enforced on Idaho's public highways by the director of the Idaho state police and the Idaho transportation board; or
- (k) Motor carriers transporting products of the mine, including sand, gravel and aggregates thereof, except petroleum products and wet concrete; or
- (l) Motor carriers transporting household goods as defined by the federal surface transportation board; or
- (m) Vehicles properly equipped, designed and customarily used for the transportation of disabled or abandoned vehicles by means of a crane, hoist, tow bar, dolly or roll bed, which vehicle shall be known as a "wrecker (tow truck)."

(3) A motor carrier which has received a written inspection report prepared pursuant to subsection (1) of this section indicating that his vehicle does not comply with applicable federal laws or regulations or Idaho laws or rules shall certify in writing to the director or his designee within fifteen (15) days of his receipt of the inspection report that he has brought his vehicle into compliance with said laws, regulations or rules. The director or his designee may assess an administrative penalty to any person who does not comply with the certification provisions of this section or who makes a false certification. The penalty shall not exceed one hundred dollars (\$100) for failure to comply with an inspection report or for making a false certification. If an assessment is contested, the director shall comply with the provisions governing contested cases under the administrative procedure act, chapter 52, title 67, Idaho Code.

(4) Any motor carrier subject to rules promulgated under the provisions of [section 67-2901A, Idaho Code](#), shall submit to a compliance review upon request of the director or any officer designated by him, by providing for inspection or copying at any reasonable time, the records, books, papers and documents relating to the safety management systems or program of such motor carrier.

(5) Any penalties collected pursuant to subsection (3) of this section shall be deposited to the state highway account.

History.

[I.C., § 67-2901B](#), as added by 1999, ch. 383, § 20, p. 27; am. 2000, ch. 469, § 6, p. 1450; am. 2006, ch. 138, § 1, p. 393; am. 2008, ch. 155, § 1, p. 445; am. 2019, ch. 64, § 2, p. 153.

STATUTORY NOTES

Cross References.

Division of building safety, § 67-2601A.

Idaho transportation board, § 40-301 et seq.

State highway account, § 40-702.

Amendments.

The 2006 amendment, by ch. 138, inserted “at any time of the year” near the end of subsections (2)(h) and (j).

The 2008 amendment, by ch. 155, in subsection (2)(k), added “and wet concrete.”

The 2019 amendment, by ch. 64, added the proviso at the end of paragraph (2)(j).

Compiler’s Notes.

For more on the commercial vehicle safety alliance, referred to in the next-to-last sentence in subsection (1), see <https://cvsa.org>.

For more on the federal surface transportation board, referred to in paragraph (2)(l), see <http://www.stb.gov/stb/index.html>.

Effective Dates.

Section 3 of S.L. 2006, ch. 138 declared an emergency. Approved March 22, 2006.

Section 2 of S.L. 2008, ch. 155 provided that the act should take effect on and after January 1, 2009.

§ 67-2902. Director and deputies — Powers of police officers. — The director of the Idaho state police and persons deputized by him as state policemen are peace officers authorized to exercise within any county the same powers as the sheriff thereof.

History.

I.C., § 67-2902, as added by S.L. 1974, ch. 27, § 3, p. 811; am. 2000, ch. 469, § 7, p. 1450.

STATUTORY NOTES

Prior Laws.

Former § 67-2902, which comprised 1919, ch. 8, part of § 32, p. 43; C.S., § 333; I.C.A., § 65-2802, was repealed by S.L. 1974, ch. 13, § 1.

Effective Dates.

Section 196 of S.L. 1974, ch. 27 provided this act be in full force and effect on and after July 1, 1974.

§ 67-2903. State police division established. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 67-2903**, as added by 1995, ch. 116, § 2, p. 386, was repealed by S.L. 2000, ch. 469, § 8, effective July 1, 2000.

A former § 67-2903, which comprised S.L. 1919, ch. 8, part of § 32, p. 43; C.S., § 334; am. 1921, ch. 198, § 1, p. 404; am. 1925, ch. 32, § 1, p. 43; am. 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2803, was repealed by S.L. 1974, ch. 13, § 1.

§ 67-2904. Administrator — Appointment, term, salary. — The director of the Idaho state police shall appoint an administrator of the Idaho state police who shall act as a deputy director and serve at the pleasure of the director. The salary of the deputy director shall be fixed for each term by the director within the limits of any appropriation made therefor.

History.

I.C., § 67-2904, as added by 1995, ch. 116, § 3, p. 386; am. 2000, ch. 469, § 9, p. 1450.

STATUTORY NOTES

Prior Laws.

Former § 67-2904 was amended and redesignated as § 67-2914 by § 16 of S.L. 1995, ch. 116.

Another former § 67-2904 which comprised C.S., § 334-A, as added by 1925, ch. 32, § 1, p. 43; am 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2804, was repealed by S.L. 1974, ch. 13, § 1.

Effective Dates.

Section 30 of S.L. 1995, ch. 116 declared an emergency. Approved March 14, 1995.

§ 67-2905. Jurisdiction. — The jurisdiction of the director of the Idaho state police and his deputies, both regular and special, and all peace officers or other persons called into the police service of the state by him or his deputies shall be coextensive with the territory of the state of Idaho and not limited by the lines of any political or municipal subdivisions.

History.

1939, ch. 60, § 4, p. 105; am. 1955, ch. 173, § 4, p. 345; am. 1974, ch. 27, § 6, p. 811; am. and redesign. 1995, ch. 116, § 5, p. 386; am. 1999, ch. 383, § 21, p. 1051; am. 2000, ch. 469, § 10, p. 1450.

STATUTORY NOTES

Prior Laws.

Former § 67-2905 was amended and redesignated as § 67-2915 by § 17 of S.L. 1995, ch. 116.

Another former § 67-2905, which comprised C.S., § 334-B, as added by 1925, ch. 32, § 1, p. 43; 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2805, was repealed by S.L. 1974, ch. 13, § 1.

This section was formerly compiled as § 19-4804.

CASE NOTES

[Administering oaths.](#)

[Construction.](#)

[Necessity for warrant.](#)

[Administering Oaths.](#)

The faithful performance blanket bond coverage found in the state's insurance policy covered the officer's duty to administer oaths, where administering the oath for the affidavit was reasonably necessary to accomplish the purpose of law enforcement and administering an oath was not outside the scope of those duties already enumerated in this section.

State v. Kappelman, 114 Idaho 136, 754 P.2d 449 (Ct. App.), cert. denied, 114 Idaho 797, 761 P.2d 312 (1988).

Construction.

Section 19-603 must be construed in pari materia with this section where arrest is made by state highway patrolman, since this section was enacted after § 19-603. *Smith v. Lott*, 73 Idaho 205, 249 P.2d 803 (1952).

Necessity for Warrant.

A state highway patrolman can arrest any individual committing a traffic violation in his presence without a warrant day or night. *Smith v. Lott*, 73 Idaho 205, 249 P.2d 803 (1952).

§ 67-2906. Cooperation and exchange of information. — The Idaho state police shall cooperate and exchange information with any other department or authority of the state or with other police forces, both within this state and outside it, and with federal agencies to achieve greater success in preventing and detecting crimes and apprehending criminals.

History.

1939, ch. 60, § 7, p. 105; am. 1955, ch. 173, § 6, p. 345; am. and redesign. 1995, ch. 116, § 7, p. 386.

STATUTORY NOTES

Prior Laws.

Former § 67-2906 was amended and redesignated as § 67-2916 by § 18 of S.L. 1995, ch. 116.

Another former § 67-2906 (C.S., § 334-C, as added by 1925, ch. 32, § 1, p. 43; 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2806) was repealed by S.L. 1974, ch. 13, § 1.

This section was formerly compiled as § 19-4807.

§ 67-2907. Jailors to receive prisoners from Idaho state police. — Any person having charge of a jail, prison or reformatory or other place of detention shall receive any prisoner arrested by the Idaho state police within the jurisdiction served by such jail and shall detain that prisoner in custody until otherwise ordered by a court of competent jurisdiction, or by the superintendent [director of the Idaho state police]. Such person in charge shall have the right to refuse to receive any juvenile not being charged with a felony and not in the process of being certified as an adult, in accordance with section 20-509, Idaho Code.

History.

1939, ch. 60, § 9, p. 105; am. 1955, ch. 173, § 8, p. 345; am. 1987, ch. 216, § 1, p. 465; am. and redesign. 1995, ch. 116, § 8, p. 386; am. 2004, ch. 23, § 13, p. 25.

STATUTORY NOTES

Prior Laws.

Former § 67-2907, which comprised C.S., § 344-D, as added by 1925, ch. 32, § 1, ps. 43; 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2807; am. 1945, ch. 104, § 9, p. 153; am. 1972, ch. 50, § 1, p. 89, was repealed by S.L. 1974, ch. 13, § 1.

This section was formerly compiled as § 19-4809.

Compiler's Notes.

The bracketed insertion at the end of the first sentence was added by the compiler to reflect the reorganization of the Idaho state police. See § 67-2901.

§ 67-2908. Salaries and expenses — Source of payment. — All salaries, costs of equipment, and expenses of maintaining and operating the Idaho state police shall be paid from the law enforcement fund and such other funds as are or may hereafter be appropriated for the purpose of operating and maintaining the Idaho state police.

History.

1939, ch. 60, § 11, p. 105; am. 1955, ch. 173, § 9, p. 345; am. 1983, ch. 179, § 6, p. 487; am. and redesign. 1995, ch. 116, § 10, p. 386; am. 2000, ch. 469, § 11, p. 1450.

STATUTORY NOTES

Cross References.

Law enforcement fund, § 67-2914

Prior Laws.

Former § 67-2908, which comprised C.S., § 334-F, as added by 1925, ch. 32, § 1, p. 43; am. 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2809; am. 1943, ch. 40, § 1, p. 82, was repealed by S.L. 1951, ch. 76, § 16, p. 129.

Legislative Intent.

Section 12 of S. L. 1939, ch. 60 read: “Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that if any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act and the application of such provision to persons and circumstances other than those as to which it is held invalid, shall not be affected thereby.”

Compiler’s Notes.

This section was formerly compiled as § 19-4811.

Section 13 of S.L. 1939, ch. 60 provides: “In so far as the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.”

Section 10 of S.L. 1955, ch. 173 read: “If any section, subsection, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional.”

§ 67-2909 — 67-2911. Authority to submit fingerprints — State criminal identification bureau established — Records and statistics — Cooperation in criminal identification. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former § 67-2909, which comprised C.S., § 334-G, as added by 1925, ch. 32, § 1, p. 43; am. 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2810, was repealed by S.L. 1970, ch. 70, § 29.

Former § 67-2910, which comprised C.S., § 334-H, I.C.A., § 65-2811; am. 1971, ch. 173, § 20, p. 812, was repealed by S.L. 1974, ch. 13, § 1.

Compiler's Notes.

Sections 67-2909 to 67-2911, which comprised I.C., § 67-2931, as added by 1972, ch. 250, § 1, p. 644; am. 1974, ch. 27, § 195, p. 811; am. and redesign. as § 67-2909 by 1995, ch. 116, § 11, p. 386; I.C., § 67-2910, as added by 1995, ch. 116, § 12, p. 386; I.C., § 19-4812, as added by 1972, ch. 238, § 1, p. 621; am. 1974, ch. 27, § 8, p. 811; am. 1979, ch. 204, § 1, p. 585; am. 1992, ch. 319, § 1, p. 950; am. 1995, ch. 29, § 1, p. 46; am. and redesign. as § 67-2911 by 1995, ch. 116, § 13, p. 386, were repealed by S.L. 1999, ch. 249, § 1, effective July 1, 1999.

§ 67-2912. State victim notification fund. — (1) There is hereby established in the state treasury the state victim notification fund. Moneys in the fund shall be perpetually appropriated to, and shall be used by the director of, the Idaho state police. Moneys deposited to the fund shall be expended for the purpose of defraying the costs of administering the statewide automated victim information and notification (SAVIN) system [automated victim notification service (VINE)] by the Idaho sheriffs' association for the purpose of satisfying the provisions of section 22, article I, of the constitution of the state of Idaho requiring victim notification of offender court and incarceration status. Moneys deposited to the fund shall be paid to the Idaho sheriffs' association on a quarterly basis for the reimbursement of all costs associated with administering the SAVIN [VINE] system. The director of the Idaho state police is authorized to allocate up to five percent (5%) of the moneys in the fund for reimbursement of all administrative expenses in relation to its administration of the fund. At the end of each state fiscal year, all moneys remaining in the fund after all costs for the administration of the SAVIN [VINE] system have been paid, less one quarter's operating and administrative moneys, shall be remitted to the crime victims compensation account established in section 72-1009, Idaho Code. The state treasurer shall invest all moneys in the state victim notification fund and interest and proceeds earned shall be retained in the fund. The Idaho sheriffs' association shall provide evidence of an independent audit of the moneys received and expenditures made under this section to the Idaho state police on a yearly basis and shall be subject to audit by the Idaho state controller at the discretion of the state controller.

(2) The state victim notification fund shall be funded as provided in [section 31-3204, Idaho Code](#).

History.

[I.C., § 67-2912](#), as added by 2012, ch. 114, § 2, p. 316.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-2912, which comprised C.S., § 334-J, as added by 1925, ch. 32, § 1, p. 43; am. 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2813; am. 1947, ch. 120, § 1, p. 281, was repealed by S.L. 1971, ch. 140, § 1.

Another former § 67-2912, as added by 1972, ch. 238, § 2, p. 621; am. 1974, ch. 27, § 9, p. 811; am. 1992, ch. 319, § 2, p. 950; am. and redesign. as § 67-2912 by 1995, ch. 116, § 14, p. 386, was repealed by S.L. 1999, ch. 249, § 1, effective July 1, 1999.

Compiler's Notes.

The bracketed insertions in the third, fourth and sixth sentences in subsection (1) were added by the compiler to update the name of the referenced service. See https://www.idoc.idaho.gov/content/prisons/victim_services.

For more on the Idaho sheriff's association, referred to in the last sentence in subsection (1), see <https://www.idahosheriffs.org>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

§ 67-2913. Search and rescue fund. — There is hereby created in the state treasury the search and rescue fund.

(1) Moneys in the fund shall be maintained in four (4) subaccounts, identified respectively as the “cost reimbursement subaccount,” the “training subaccount,” the “catastrophic search subaccount” and the “equipment purchase matching subaccount.” Moneys in the cost reimbursement subaccount are perpetually appropriated to and shall be used by the director of the Idaho state police for the purpose of defraying costs of search and rescue missions conducted by the county sheriff’s office at a maximum of four thousand dollars (\$4,000) per rescue mission, regardless of the number of counties or county search and rescue organizations involved. One hundred percent (100%) of the moneys received pursuant to sections 49-448 and 63-2412, Idaho Code, shall be deposited to the credit of the cost reimbursement subaccount. Of the additional fine imposed pursuant to [section 36-1405, Idaho Code](#), fifty percent (50%) shall be deposited to the credit of the cost reimbursement subaccount. In the event the balance in the cost reimbursement subaccount exceeds twenty-five thousand dollars (\$25,000), the amount in excess shall be transferred to the equipment purchase matching subaccount.

(2) Fifty percent (50%) of the moneys received pursuant to the provisions of [section 36-1405, Idaho Code](#), and any amount in excess of twenty-five thousand dollars (\$25,000) in the cost reimbursement subaccount, shall be deposited in the search and rescue account to the credit of the equipment purchase matching subaccount, and are perpetually appropriated to the director of the Idaho state police for the purposes of the subaccount. Moneys in the equipment purchase matching subaccount shall be used by the director to match local funds for the purchase of equipment for use by local search and rescue units, at a maximum amount of two thousand dollars (\$2,000) per unit in any single year. The cost sharing match in the equipment purchase matching subaccount shall be thirty-five percent (35%) local funds to sixty-five percent (65%) from the equipment purchase matching subaccount. In the event the balance in the equipment purchase matching subaccount exceeds fifteen thousand dollars (\$15,000), the amount in excess shall be transferred to the training subaccount.

(3) Excess moneys described in subsection (2) of this section shall be deposited to the credit of the training subaccount. In the event the balance of the training subaccount exceeds twenty thousand dollars (\$20,000), the amount in excess shall be transferred to the catastrophic search subaccount. Such moneys shall be perpetually appropriated to the director of the department of law enforcement [Idaho state police] for the purposes of the subaccounts. Moneys in the training subaccount shall be used by the director for the purpose of providing training funds to sheriffs' offices for search and rescue training, to a maximum of two thousand dollars (\$2,000) per training exercise, regardless of the number of counties or county search and rescue organizations involved.

(4) Moneys in the catastrophic search subaccount shall be used by the director for the purpose of providing reimbursement to the sheriff's office for searches and rescues costing in excess of four thousand dollars (\$4,000). Claims for reimbursement by sheriffs' offices shall be made on a quarterly basis and reimbursements shall be made by the director once each quarter. Reimbursement of each claim shall be made by the director as follows: (a) the first four thousand dollars (\$4,000) of a claim shall be reimbursed from the cost reimbursement subaccount; (b) the remainder of each claim exceeding four thousand dollars (\$4,000) shall be reimbursed from the catastrophic search subaccount. In the event that there are insufficient moneys in the catastrophic search subaccount to fully reimburse all catastrophic search claims in a given quarter, the director shall partially reimburse each claim on a pro rata basis. A sheriff's office may seek further reimbursement for any unreimbursed portion of a claim in the following quarters.

(5) The state treasurer shall invest all moneys in the search and rescue fund and the interest and proceeds earned on such investments shall be returned to the search and rescue fund.

History.

I.C., § 67-2903, as added by 1985, ch. 176, § 1, p. 458; am. 1990, ch. 380, § 2, p. 1054; am. and redesign. 1995, ch. 116, § 15, p. 386; am. 1996, ch. 57, § 2, p. 168; am. 2000, ch. 186, § 1, p. 456; am. 2000, ch. 469, § 12, p. 1450.

STATUTORY NOTES

Prior Laws.

Former § 67-2913 which comprised C.S., § 334-K, as added by 1925, ch. 32, § 1, p. 43; am. 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2814, was repealed by S.L. 1963, ch. 78, § 1.

Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 186, § 1, in the introductory language substituted “state treasury” for “dedicated fund” and “rescue fund” for “rescue account”; in subsection (1) substituted “four (4) subaccounts” for “two (2) subaccounts” and inserted “the ‘training subaccount,’ the ‘catastrophic search subaccount’” in the first sentence, inserted the third sentence, and substituted “twenty-five” for “fifty” in the last sentence; in subsection (2) substituted “twenty-five” for “fifty” in the first sentence, and added the last sentence; and added subsections (3) through (5).

The 2000 amendment, by ch. 469, § 12, substituted “Idaho state police” for “department of law enforcement” in subsections (1) and (2).

Compiler’s Notes.

This section was formerly compiled as § 67-2903.

The bracketed insertion in subsection (3) was inserted by the compiler to correct the name of the referenced agency. See § 67-2901.

§ 67-2913A. Snowmobile search and rescue fund — Advisory committee. — (1) There is hereby created in the state treasury the snowmobile search and rescue fund. Moneys in the snowmobile search and rescue fund shall be perpetually appropriated to and shall be used by the director of the Idaho state police for the purpose of defraying costs of search and rescue operations which are conducted by a county sheriff's office to assist or recover individuals riding snowmobiles, and for no other purpose. One hundred percent (100%) of the moneys distributed to the fund pursuant to section 67-7106, Idaho Code, shall be deposited to the credit of the state snowmobile search and rescue fund. The fund shall be administered in the same manner as the state search and rescue fund created in section 67-2913, Idaho Code. The director of the Idaho state police is authorized to allocate up to ten percent (10%) of the moneys for reimbursement of administrative expenses.

(2) In the event the balance in the state snowmobile search and rescue fund exceeds thirty thousand dollars (\$30,000) on July 1 of any year, moneys in excess of thirty thousand dollars (\$30,000) shall be divided into two (2) equal parts and distributed to the:

(a) Training subaccount of the search and rescue fund created in [section 67-2913, Idaho Code](#); and

(b) State snowmobile fund created in [section 67-7106, Idaho Code](#), to be used exclusively by the director of the Idaho department of parks and recreation for snowmobile trail groomer replacement.

(3) The state treasurer shall invest all moneys in the state snowmobile search and rescue fund and the interest and proceeds earned on such investments shall be returned to the state snowmobile search and rescue fund.

(4) In the event that all moneys in the state snowmobile search and rescue fund are exhausted or no longer available, nothing in this chapter shall be construed to absolve any entity which would otherwise provide applicable services, from conducting search and rescue operations to assist or recover individuals riding snowmobiles. Nothing in this chapter shall be construed

to limit recovery of moneys solely to the state snowmobile search and rescue fund for search and rescue operations assisting or recovering individuals riding snowmobiles.

(5) A three (3) member advisory committee shall review the operation and disbursement of moneys from the fund at the end of each fiscal year, and shall report to the fund administrator any proposed guidelines or policies deemed appropriate to improve operation of the fund. The committee shall be comprised of one (1) representative from the Idaho state snowmobile association, one (1) representative from the Idaho sheriffs' association, and one (1) representative appointed by the director of the Idaho department of parks and recreation. The respective organizations shall be responsible for reimbursing their member representative for any expenses incurred for service on the committee.

History.

I.C., § 67-2913A, as added by 2005, ch. 141, § 1, p. 434.

STATUTORY NOTES

Cross References.

Director of department of parks and recreation, § 67-4222.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

For more on the Idaho state snowmobile association, referred to in subsection (5), see <https://www.idahosnow.org>.

For more on the Idaho sheriff's association, referred to in subsection (5), see <https://www.idahosheriffs.org>.

§ 67-2914. Idaho law enforcement fund established. — For the purposes of the Idaho state police, there is established in the state treasury of the state of Idaho the Idaho law enforcement fund, to which shall be deposited funds as provided by law.

History.

I.C., § 49-1301, as added by 1983, ch. 179, § 5, p. 487; am. 1984, ch. 195, § 28, p. 445; am. 1985, ch. 253, § 6, p. 497; am. and redesign. 1988, ch. 265, § 582, p. 549; am. and redesign. 1995, ch. 116, § 16, p. 386; am. 2000, ch. 469, § 13, p. 1450; am. 2009, ch. 333, § 5, p. 967; am. 2011, ch. 68, § 4, p. 143.

STATUTORY NOTES

Prior Laws.

Former § 67-2914, which comprised C.S., § 334-L, as added by 1925, ch. 32, § 1, p. 43; am. 1925, ch. 188, § 1 p. 344; I.C.A., § 65-2815, was repealed by S.L. 1974, ch. 13, § 1.

Amendments.

The 2009 amendment, by ch. 333, added the subsection (1) designation and subsection (2).

The 2011 amendment, by ch. 68, deleted the subsection (1) designation and deleted former subsection (2), which read: “The Idaho state police provide a critical service to the citizens and motorists of the state of Idaho by providing for the public’s health, welfare and safety. In light of the vital service the agency provides, the legislature acknowledges that providing an ongoing and dedicated source of funds for the agency is necessary to safeguard the Idaho state police from the impacts of future economic downturns.”

Legislative Intent.

Section 1 of S.L. 2009, ch. 333 provided: “Legislative Intent. The Legislature acknowledges that, beginning July 1, 2010, the revised

distribution from the Highway Distribution Account and the revised distribution from gasoline tax revenues provided for in this act will reduce moneys annually provided to the Idaho State Police and the Idaho Department of Parks and Recreation. In light of such reductions, the Legislature will authorize, via concurrent resolution, a legislative task force, comprised of eight members of the Legislature, including both co-chairs of the Joint Finance-Appropriations Committee, to study potential sources of dedicated revenue to offset the reductions that will be sustained by the Idaho State Police and the Idaho Department of Parks and Recreation. The Legislature declares that every effort will be made to find appropriate alternative dedicated sources of moneys on an ongoing basis to offset the reduced distributions to the Idaho State Police and the Idaho Department of Parks and Recreation.”

Compiler’s Notes.

This section was originally compiled as § 67-1301 and was amended and redesignated as § 67-2904 by S.L. 1988, ch. 265, § 582, p. 549 and has since been further amended and redesignated as this section by § 16 of S.L. 1995, ch. 116.

Section 6 of S.L. 2009, ch. 333 provided: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

S.L. 2011, Chapter 68 became law without the signature of the governor, effective July 1, 2011.

Effective Dates.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

Section 7 of S.L. 2009, ch. 333 declared an emergency. Approved May 12, 2009.

§ 67-2915. Statistical report of malicious harassment crimes. — The director of the Idaho state police shall annually submit to the governor and the chairman of the judiciary and rules committee in the senate and the chairman of the judiciary, rules and administration committee in the house of representatives a report on malicious harassment crimes, as that crime is defined in section 18-7902, Idaho Code. Report content shall be limited to statistical data and shall be presented in conformance with the provisions of section 74-124, Idaho Code.

All city, county and state law enforcement units shall be required to report to the director all incidences of, complaints on, and arrests for malicious harassment crimes within their respective jurisdictions. The director shall develop a standard procedure and shall prescribe and provide a standard form for complete and uniform reporting.

History.

I.C., § 67-2905, as added by 1989, ch. 243, § 1, p. 591; am. and redesign. 1995, ch. 116, § 17, p. 386; am. 2000, ch. 469, § 14, p. 1450; am. 2015, ch. 141, § 170, p. 379.

STATUTORY NOTES

Prior Laws.

Former § 67-2915, which comprised 1919, ch. 8, part of § 32, p. 43; C.S., § 334-M, as added by 1925, ch. 32, § 1, p. 43; am. 1925, ch. 188, § 1, p. 344; I.C.A., § 65-2816 was repealed by S.L. 1974, ch. 13, § 1.

Amendments.

The 2015 amendment, by ch. 141, substituted “74-124” for “9-335” at the end of the first paragraph.

Compiler’s Notes.

This section was formerly compiled as § 67-2905.

§ 67-2916. Reports of murders. — (1) As used in this section:

(a) “Director” means the director of the Idaho state police.

(b) “Murder” has the meaning provided in [section 18-4003, Idaho Code](#).

(2) Any law enforcement agency within the state of Idaho having primary responsibility for the investigation of the case shall provide information relating to any suspected murder to the director within twenty-five (25) days after its discovery. The law enforcement agency shall submit the information on a form which shall be developed and provided by the director. The form shall contain only information necessary to aid law enforcement personnel in comparing murders and suspected murders and discovering those exhibiting similar characteristics. The director shall enter information submitted by an investigating agency into a file maintained and controlled by the director and shall compare such information to information on other murders or suspected murders, for the purpose of discovering similarities in criminal methods and suspect descriptions. The director shall advise the concerned investigating agencies if the director finds murders exhibiting similar criminal methods or suspect descriptions.

(3) When an investigating law enforcement agency terminates active investigation of a suspected murder due to an arrest having been made in the case, death of the primary suspect, or whatever other reason, the investigating agency shall so notify the director within thirty (30) days following such termination. Notification shall include the reason for terminating active investigation.

(4) All suspected murders coming under the jurisdiction of any law enforcement agency in the state of Idaho occurring less than one (1) year before the effective date of this section shall be reported to the director as provided in this section within sixty-five (65) days after the effective date of this section or thirty (30) days after the director provides forms for such purpose, whichever is later.

History.

[I.C., § 67-2906](#), as added by 1990, ch. 66, § 1, p. 145; am. and redesign. 1995, ch. 116, § 18, p. 386; am. 2000, ch. 469, § 15, p. 1450.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-2906.

Prior Laws.

Former § 67-2916, which comprised 1919, ch. 8, part of § 32, p. 43; C.S., § 335; I.C.A., was repealed by S.L. 1974, ch. 13, § 1.

Compiler's Notes.

The phrase “the effective date of this section” in subsection (4) refers to the effective date of S.L. 1990, ch. 66, § 1, which enacted this section, effective July 1, 1990.

§ 67-2917. Hazardous waste. — Wherever hazardous waste, as defined in section 39-4403, Idaho Code, is being transported within the state, within the state to without the state, or from without the state to within the state, the operator or owner of the motor vehicle or trailer, as defined in chapter 1, title 49, Idaho Code, transporting hazardous waste is hereby required to stop at such ports of entry or checking stations and submit to inspection or weighing for compliance with the laws of the state of Idaho. Additionally, such owner or operator of the motor vehicle or trailer transporting hazardous waste is hereby required and directed to allow employees of the department of environmental quality, authorized Idaho transportation department employees or the state police or any peace officer on duty to inspect and review all manifests and bills of lading to ensure that such hazardous waste is being shipped in a manner which will not endanger the health, welfare or safety of the citizens of the state of Idaho and is being shipped in compliance with the laws of the state of Idaho and any rules promulgated pursuant thereto.

History.

I.C., § 67-2929, as added by 1984, ch. 205, § 11, p. 502; am. 1988, ch. 265, § 584, p. 549; am. and redesign. 1995, ch. 116, § 19, p. 386; am. 1999, ch. 383, § 22, p. 1051; am. 2001, ch. 103, § 100, p. 253.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-104.

Idaho transportation department, § 40-501 et seq.

Prior Laws.

Former § 67-2917, which comprised 1919, ch. 8, part of § 32, p. 43; C.S., § 336; am. 1921, ch. 32, § 1, p. 40; I.C.A., § 65-2818; am. 1961, ch. 204, § 11, p. 323 was repealed by S.L. 1974, ch. 13, § 1.

Compiler's Notes.

This section was formerly compiled as § 67-2929.

Effective Dates.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

§ 67-2918. Penalties. — (1) Any person failing to stop at any port of entry or checking station when so required by section 67-2917, Idaho Code, or who refuses to submit to the inspection or weighing as provided in that section or who refuses to allow inspection or review of any manifest or bill of lading, shall be guilty of a misdemeanor and shall be subject to a fine of not more than ten thousand dollars (\$10,000), imprisonment for a period of not more than six (6) months or by both such fine and imprisonment. This penalty shall be in addition to any other civil or criminal penalties which may be provided by law.

(2) If a person violates the provisions of subsection (1) of this section and it is determined that the violation of subsection (1) of this section was caused in whole or by the knowing, willful or negligent act or omission of a generator of hazardous waste incorrectly filling out a manifest or bill of lading, by an act or omission of a person who caused the hazardous waste to be transported on the highways or roads of this state, the generator of the hazardous waste or the person causing the hazardous waste to be transported shall be guilty of a misdemeanor and shall be subject to a fine of not more than ten thousand dollars (\$10,000), imprisonment for a period of not more than six (6) months or by both such fine and imprisonment. This penalty shall be in addition to any other civil or criminal penalties which may be provided by law.

History.

I.C., § 67-2930, as added by 1984, ch. 205, § 12, p. 502; am. and redesign. 1995, ch. 116, § 20, p. 386.

STATUTORY NOTES

Prior Laws.

Former § 67-2918 which comprised 1919, ch. 138, § 1, p. 433; C.S., § 337; am. 1921, ch. 211, § 1, p. 423; am. 1927, ch. 243, § 1, p. 369; am. 1929, ch. 67, § 1, p. 96; I.C.A., § 65-2819; am. 1961, ch. 204, § 12, p. 323 was repealed by S.L. 1974, ch. 74, § 1.

Compiler's Notes.

This section was formerly compiled as § 67-2930.

Effective Dates.

Section 14 of S.L. 1984, ch. 205 declared an emergency. Approved April 3, 1984.

Section 30 of S.L. 1995, ch. 116 declared an emergency. Approved March 14, 1995.

§ 67-2919. Testing and retention of sexual assault evidence kits. — (1) Except as provided in subsection (8) of this section, evidence obtained in a sexual assault evidence kit shall be tested by the Idaho state police forensic services laboratory according to sampling protocols and procedures established by the laboratory.

(2)(a) An entity that performs a medical examination of a victim of a reported sexual assault using a sexual assault evidence kit shall do so without regard to the ability or inability of a victim of a reported sexual assault to pay for such an examination.

(b) An entity qualified and reasonably able to perform a medical examination of a victim of a reported sexual assault using a sexual assault evidence kit shall not deny a medical examination to a victim of a reported sexual assault.

(3) An entity that has performed a medical examination of a victim of a reported sexual assault using a sexual assault evidence kit shall notify the local law enforcement agency of the jurisdiction where the reported sexual assault occurred that sexual assault evidence has been collected and is ready for law enforcement to take custody of such evidence according to its established protocol. The medical entity collecting the kit shall document in the state kit tracking system any required fields.

(4) A local law enforcement agency that receives notice from an entity that has performed a medical examination of a victim of a reported sexual assault as described in subsection (3) of this section shall facilitate the collection of the sexual assault evidence kit and any other collected evidence from the entity that has performed a medical examination of a victim of a reported sexual assault. After obtaining the sexual assault evidence kit and any other collected evidence from the entity that has performed a medical examination of a victim of a reported sexual assault, the local law enforcement agency shall submit such kit, in adherence to the submission policies of the Idaho state police forensic services laboratory, to the Idaho state police forensic services laboratory for testing as soon as reasonably practical, but not later than thirty (30) days after obtaining the kit. If kit submission to the Idaho state police forensic services laboratory is

not done within the thirty (30) day time limit or testing is not done by the Idaho state police forensic services laboratory within the ninety (90) day additional time limit established in this subsection, it shall not affect the ability to prosecute or defeat the jurisdiction of the court. Any law enforcement agency with sexual assault evidence kits or other sexual assault case evidence belonging to another jurisdiction must notify that jurisdiction within seven (7) days of obtaining the kits or evidence, and the receiving jurisdiction must pick up the sexual assault evidence kits or other sexual assault case evidence within seven (7) days. The law enforcement agency shall make a good faith effort to collect and submit the required reference samples associated with a submitted sexual assault evidence kit.

(5) For all sexual assault evidence kits received pursuant to subsection (4) of this section, the Idaho state police forensic services laboratory shall test such kits and submit eligible results to the Idaho DNA database within ninety (90) days. The laboratory shall report any kits not processed within ninety (90) days to the county prosecutor with jurisdiction in the case and to the Idaho legislature.

(6) Following analysis by the Idaho state police forensic services laboratory, sexual assault evidence kits shall be returned to and retained by the investigating agency in accordance with agency evidence standards and for the following durations:

(a) For death penalty cases, until the sentence in the case has been carried out and no unapprehended persons associated with the offense exist;

(b) For felony cases, including anonymous sexual assault kits collected under the violence against women act, fifty-five (55) years from the collection of the kit during the medical examination or until the sentence in the case is completed, whichever occurs first;

(c) For cases before July 1, 2019, where there is no evidence to support a crime being committed or when it is no longer being investigated as a crime or when an adult victim expressly indicates that no further forensic examination or testing occur, ten (10) years from collection of the kit during the medical examination; and

(d) For cases on and after July 1, 2019, where a crime is alleged and the allegation has been determined to be unfounded, ten (10) years from

collection of the kit during the medical examination.

(7) Provided that an investigating agency has current contact information, the investigating agency shall, upon written request from a victim of sexual assault, a parent or guardian if the victim is a minor, or a relative if the victim is deceased, provide written notification of the destruction or disposal of a sexual assault evidence kit and any other sexual assault case evidence no later than sixty (60) days before the date of the destruction or disposal. A victim of sexual assault, a parent or guardian if the victim is a minor, or a relative if the victim is deceased, may petition a court to preserve a sexual assault evidence kit and its contents for longer than the time prescribed in this subsection.

(8) All sexual assault evidence kits collected in this state where a crime is alleged and the allegation has not been determined to be unfounded shall be processed by the Idaho state police forensic services laboratory except for kits where the victim requests the kit be collected as an anonymous kit, such as under the provisions of the federal violence against women act. Any sexual assault evidence kit, with the exception of an anonymous sexual assault evidence kit, that is not examined and tested shall be independently reviewed by the county prosecutor. In the event such review concludes that the kit should have been tested, testing shall occur as provided in subsections (4) and (5) of this section.

(9) The Idaho state police shall promulgate rules to create a tracking process for sexual assault evidence kits in possession of the Idaho state police forensic services laboratory and every law enforcement agency throughout the state. Such rules shall provide for the information to be submitted to the Idaho state police by law enforcement agencies to assist in such tracking.

(10) Idaho state police forensic services shall approve and provide, at no cost to the victim, appropriate sexual assault evidence kits to requesting entities and law enforcement agencies. All such kits shall contain a form for victims to inform them of their right of notification pursuant to subsections (12) and (13) of this section and of their right to decline to have a kit collected pursuant to subsection (1) of this section.

(11) Within one hundred eighty (180) days of the effective date of this act, the Idaho state police forensic services laboratory shall provide a

onetime report to the legislature of all untested sexual assault evidence kits in Idaho. To assist with this onetime report, all law enforcement agencies in Idaho shall perform a onetime audit of any untested sexual assault evidence kits in their possession and submit to the Idaho state police forensic services director the following:

- (a) The number of untested kits in the law enforcement agency's possession;
- (b) The date each kit was collected and the reason it was not submitted to Idaho state police forensic services for testing; and
- (c) The number of any anonymous or unreported kits in the law enforcement agency's possession.

Law enforcement agencies shall follow the same protocol to perform the audit of untested sexual assault evidence kits as they would with any new kit submitted to the agency. The audit performed by a law enforcement agency shall be reviewed by a law enforcement representative and the county prosecutor before the final report is provided to the legislature.

(12) A law enforcement agency that submits a sexual assault evidence kit pursuant to subsection (4) of this section shall, upon written request, notify a victim of sexual assault, a parent or guardian if the victim is a minor at the time of notification, or a relative if the victim is deceased, of the following:

- (a) When the sexual assault evidence kit is submitted to the Idaho state police forensic services laboratory;
- (b) When any evidence sample DNA profile is entered into the Idaho DNA database;
- (c) When a DNA match occurs; provided however, that such notification shall state only that a match has occurred and shall not contain any genetic or other identifying information; and
- (d) When there is any change in the status of the case or reopening of the case.

As used in this subsection, "notify" shall include updates to a website used by the Idaho state police forensic services laboratory for sexual assault evidence kits.

(13) On or before January 20, 2017, and by January 20 of each year thereafter, Idaho state police forensic services shall submit a report to the Idaho legislature regarding its examination of sexual assault evidence kits throughout the state in the previous year. The report shall include, but not be limited to, the number of kits purchased and distributed by Idaho state police forensic services, the number of kits collected by each law enforcement agency, the number of kits tested by the Idaho state police forensic services laboratory, the number of kits not submitted to the Idaho state police forensic services laboratory pursuant to subsection (8) of this section, the number of DNA database hits from sexual assault evidence kits, the number of unresolved DNA database hits from sexual assault evidence kits for each law enforcement agency, the number of sexual assault evidence kits submitted without required reference samples for each law enforcement agency, and a list of any law enforcement agencies that did not adhere to the tracking process promulgated pursuant to subsection (9) of this section, and for the report submitted in 2017, a list of any law enforcement agencies that did not participate in the audit required in subsection (11) of this section. This report shall be available on the website of the Idaho state police and readily available to the public. No victim or alleged perpetrator names shall be included in the report. Information shall be provided in aggregate and shall not include case-specific information.

(14) As used in this section:

(a) “Sexual assault evidence kit” means a set of materials, such as swabs and tools for collecting blood samples, used to gather forensic evidence from a victim of reported sexual assault and the evidence obtained with such materials.

(b) “Unfounded” means evidence exists that proves no crime occurred.

(c) “Written request” and “written notification” shall include electronic mail.

History.

I.C., § 67-2919, as added by 2016, ch. 175, § 2, p. 478; am. 2017, ch. 260, § 1, p. 639; am. 2019, ch. 177, § 2, p. 569.

STATUTORY NOTES

Prior Laws.

Former § 67-2919, Renewal of licenses — Fees, which comprised S.L. 1919, ch. 138, §§ 1, 2, p. 433; C.S., § 338; I.C.A., § 65-2820; am. S.L. 1951, ch. 249, § 1, p. 526; am. S.L. 1961, ch. 204, § 13, p. 323; am. S.L. 1965, ch. 164, § 1, p. 317; am. S.L. 1969, ch. 464, § 1, p. 1304; am. S.L. 1970, ch. 70, § 30, p. 1967, were repealed by S.L. 1974, ch. 13, § 1.

Amendments.

The 2017 amendment, by ch. 260, inserted “and retention” in the section heading; substituted “subsection (8) of this section” for “subsection (6) of this section” near the middle of subsection (1); added present subsections (2) and (7), redesignating the remaining subsections accordingly; substituted “An entity” for “A health care facility” at the beginning of subsection (3); rewrote the first two sentences in present subsection (4), which formerly read: “A local law enforcement agency that receives notice from a health care facility as described in subsection (2) of this section shall facilitate the collection of the sexual assault evidence kit and any other collected evidence from the health care facility. After obtaining the sexual assault evidence kit and any other collected evidence from the health care facility, the local law enforcement agency shall submit such kit, in adherence to the submission policies of the Idaho state police forensic services laboratory, to the Idaho state police forensic services laboratory for testing as soon as reasonably practical, but not later than thirty (30) days after obtaining the kit”; rewrote present subsection (6), which formerly read: “Following analysis by the Idaho state police forensic services laboratory, sexual assault evidence kits shall be returned to and retained by the investigating agency in accordance with agency evidence standards following a reported sexual assault or for the period of time that any person remains incarcerated in connection with the offense, whichever is greater”; in present subsection (10), substituted “entities” for “health care facilities” near the end of the first sentence, and substituted “subsections (12) and (13) of this section” for “subsections (10) and (11) of this section” near the middle of the last sentence; in present subsection (12), substituted “subsection (4) of this section” for “subsection (3) of this section” near the beginning of the introductory paragraph, and added paragraph (d) and the ending paragraph; deleted former subsection (11), which read: “The county prosecutor, or their designee, shall upon written request notify a victim of

sexual assault, a parent or guardian if the victim is a minor at the time of notification, or a relative if the victim is deceased, of the following: (a) When there is any planned destruction of a sexual assault evidence kit or any other sexual assault case evidence; and (b) When there is any change in the status of their case or reopening of the case”; in the second sentence of present subsection (13), substituted “subsection (9)” for “subsection (7)” and “subsection (11)” for “subsection (9)” near the end of the sentence; and in present subsection (14), added the paragraph (a) designator and added paragraph (b).

The 2019 amendment, by ch. 177, deleted “Unless an adult victim of a reported sexual assault expressly indicates otherwise and” from the beginning of subsection (1); in subsection (3), added the second sentence; in subsection (4), inserted “laboratory” near the middle of the third sentence and added the present last sentence; in subsection (6), inserted “before July 1, 2019” near the beginning of paragraph (c) and added paragraph (d); rewrote subsection (8), which formerly read: “All sexual assault evidence kits collected in this state shall be processed by the Idaho state police forensic services laboratory except when there is no evidence to support a crime being committed, when it is no longer being investigated as a crime or when an adult victim expressly indicates that no further forensic examination or testing occur pursuant to subsection (1) of this section. Any sexual assault evidence kit that is not examined and tested shall be independently reviewed by the county prosecutor. In the event such review concludes that the kit should have been tested, testing shall occur as provided in subsections (4) and (5) of this section”; deleted “or tested” following “kit collected” near the end of subsection (10); substituted “subsection (8) of this section, the number of DNA database hits from sexual assault evidence kits, the number of unresolved DNA database hits from sexual assault evidence kits for each law enforcement agency, the number of sexual assault evidence kits submitted without required reference samples for each law enforcement agency, and” for “subsection (1) or (8) of this section, the number of DNA database hits from sexual assault cases”; near the middle of the second sentence in subsection (13); and, in subsection (14), added present paragraph (b) and redesignated former paragraph (b) as paragraph (c).

Legislative Intent.

Section 1 of S.L. 2016, ch. 175 provided: “Legislative Intent. The Legislature finds that DNA evidence is a powerful law enforcement tool that can identify unknown suspects, connect crimes together and exonerate the innocent. It is the intent of the Legislature that sexual assault evidence kits are tested in a timely manner to advance public safety.”

Section 1 of S.L. 2019, ch. 116 provided: “Legislative Intent. It is the intent of the Legislature that the changes made in the requirements for the testing of sexual assault evidence kits contained in this act shall apply only to the testing of sexual assault evidence kits collected on and after the effective date of this act and shall not be retroactive to sexual assault evidence kits that were collected prior to the effective date of this act.”

Federal References.

For federal statutes relating to violence against women, see [34 USCS § 12291 et seq.](#)

Compiler’s Notes.

The phrase “the effective date of this act” in the introductory paragraph in subsection (11) refers to the effective date of S.L. 2016, Chapter 175, which was effective July 1, 2016.

For more information on the Idaho state police, see <https://isp.idaho.gov/forensics>.

For more information on the Idaho DNA database, see <https://isp.idaho.gov/forensics/services/dna-database>.

§ 67-2920. Blue Alert system. — (1) There is hereby established a statewide alert system known as “Blue Alert” that shall be developed and implemented by the Idaho state police.

(2) As used in this section:

(a) “Law enforcement agency” means a law enforcement agency with jurisdiction over the search for a suspect in a case involving the death or serious injury of a peace officer or an agency employing a peace officer who is missing in the line of duty; and

(b) “Peace officer” means a person who is certified to exercise the powers of arrest.

(3) The blue alert system may be activated:

(a) When a suspect for a crime involving the death or serious injury of a peace officer has not been apprehended and law enforcement personnel have determined that the suspect may be a serious threat to the public; or

(b) When a peace officer becomes missing while in the line of duty under circumstances warranting concern for such peace officer’s safety.

(4) Upon notification by a law enforcement agency that a suspect in a case involving the death or serious injury of a peace officer has not been apprehended and may be a serious threat to the public or to a peace officer or that a peace officer is missing in the line of duty under circumstances warranting concern for such peace officer’s safety, the state police shall activate the blue alert system and notify appropriate participants in the blue alert system, as established by rule, if:

(a) A law enforcement agency believes that a suspect has not been apprehended;

(b) A law enforcement agency believes that the suspect may be a serious threat to the public; and

(c) Sufficient information is available to disseminate to the public that could assist in locating the suspect or the missing peace officer. The area of the alert may be less than statewide if the division determines that the

nature of the event makes it probable that the suspect did not leave a certain geographic location.

(5) Before requesting activation of the blue alert system, a law enforcement agency shall verify that the criteria described in subsection (4) of this section has been satisfied. The law enforcement agency shall assess the appropriate boundaries of the alert based on the nature of the suspect and the circumstances surrounding the crime or the last known location of the missing peace officer.

(6) The state police shall terminate the blue alert with respect to a particular incident if:

(a) The suspect or peace officer is located or the incident is otherwise resolved; or

(b) The state police determine that the blue alert system is no longer an effective tool for locating the suspect or the peace officer. Law enforcement agencies shall notify the division immediately when the suspect is located and in custody or the peace officer is found.

(7) Any entity or individual involved in the dissemination of a blue alert generated pursuant to this section shall not be liable for any civil damages arising from such dissemination.

History.

I.C., § 67-2920, as added by 2019, ch. 142, § 1, p. 489.

STATUTORY NOTES

Compiler's Notes.

Former § 67-2920, Occupational license fund, which comprised S.L. 1919, ch. 138, § 3, p. 433; C.S., § 339; am. S.L. 1921, ch. 45, § 1, p. 72; I.C.A., § 65-2821; am. S.L. 1933, ch. 39, § 1, p. 51, was repealed by S.L. 1974, ch. 13, § 1.

§ 67-2921, 69-2922. Recording of licenses — Payment of reexamination and certificate fees. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised C.S., §§ 339-A, 339-B, as added by 1927, ch. 243, § 2, p. 369; I.C.A., §§ 65-2822, 65-2823; am. 1951, ch. 122, § 1, p. 290; am. 1961, ch. 204, § 14, p. 323, were repealed by S.L. 1974, ch. 13, § 1.

**§ 67-2923. Commissioner and deputies — Powers of peace officers.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, comprising 1919, ch. 8, § 33, p. 43; C.S., § 340; I.C.A., § 65-2824, was repealed by S.L. 1974, ch. 27, § 1.

§ 67-2924, 67-2925. Occupational license fund. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised I.C.A, §§ 65-2825, 65-2826, as added by 1933, ch. 39, § 2, p. 51, were repealed by S.L. 1974, ch. 13, § 1.

§ 67-2926. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-2926 was amended and redesignated as § 40-510 by § 6 of S.L. 1991, ch. 288.

§ 67-2927. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-2927 was amended and redesignated as § 40-511 by § 7 of S.L. 1991, ch. 288.

§ 67-2928. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-2928 was amended and redesignated as § 40-512 by § 8 of S.L. 1991, ch. 287.

§ 67-2929. [Amended and Redesignated.]

STATUTORY NOTES

Prior Laws.

Another former § 67-2929 which comprised S.L. 1950 (E.S.), ch. 15, § 4, p. 26 was repealed by S.L. 1974, ch. 13, § 1.

Compiler's Notes.

Former § 67-2929 was amended and redesignated as § 67-2917 by § 19 of S.L. 1995, ch. 116.

§ 67-2930. [Amended and Redesignated.]

STATUTORY NOTES

Prior Laws.

Another former § 67-2930 which comprised S.L. 1967, ch. 131, § 1, p. 301 was repealed by S.L. 1974, ch. 13, § 1.

Compiler's Notes.

Former § 67-2930 was amended and redesignated as § 67-2918 by § 20 of S.L. 1995, ch. 116.

§ 67-2931. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-2931 was amended and redesignated as § 67-2909 by § 11 of S.L. 1995, ch. 116, effective March 14, 1995. Section 67-2909 was subsequently repealed by S.L. 1999, ch. 249, § 1, effective July 1, 1999.

Chapter 30

CRIMINAL HISTORY RECORDS AND CRIME INFORMATION

Sec.

67-3001. Definitions.

67-3002. Positive identification — Fingerprints required.

67-3003. Duties of the department.

67-3004. Fingerprinting and identification.

67-3005. Records and reporting — Duties of other criminal justice agencies and the court.

67-3006. Reporting of uniform crime information.

67-3007. Completeness, accuracy and security of criminal history records.

67-3008. Release of criminal history record information.

67-3009. Criminal penalties.

67-3010. Fees authorized.

67-3011. Noncompliance with reporting requirements.

67-3012. National crime prevention and privacy compact.

67-3013. Appointment of compact officer.

67-3014. Expungement for victims of human trafficking.

§ 67-3001. Definitions. — As used in this chapter:

(1) “Administration of criminal justice” means performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage and dissemination of criminal history record information.

(2) “Bureau” means the bureau of criminal identification in the Idaho state police.

(3) “Court” means any court created by the constitution and laws of the state of Idaho; and clerks of the district court.

(4) “Criminal history records” means physical and automated information on individuals collected and maintained by the Idaho state police as a result of arrest or the initiation of a criminal proceeding by felony summons or information. A criminal history record includes, as defined by department rule, any or all of the following information relating to each event that is subject to fingerprinting under [section 67-3004, Idaho Code](#): (a) Information relating to offenders;

(b) Information relating to arrests;

(c) Information relating to prosecutions; (d) Information relating to the disposition of cases by courts; (e) Information relating to sentencing; (f) Information relating to probation and parole status; and (g) Information relating to offenders received by a correctional agency, facility or other institution.

The term shall not include statistical or analytical records, reports in which individuals are not identified and from which their identities are not ascertainable, criminal intelligence information or criminal investigative information, and source information or records maintained by and held at another criminal justice agency or the court.

(5) “Criminal justice agency” means a governmental agency or subdivision of a government entity that performs the administration of criminal justice pursuant to a statute, and that allocates a substantial portion of its budget to the administration of criminal justice.

(6) “Department” means the Idaho state police.

(7) “Director” means the director of the Idaho state police.

(8) “Disposition” means the formal or informal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(9) “Fingerprints” means the fingerprint impressions submitted to and compiled by the bureau, in a manual or automated form, pursuant to [section 67-3004, Idaho Code](#).

(10) “Pecuniary benefit” means any benefit to a person or member of his household in the form of money, property or commercial interests, the primary significance of which is economic gain.

(11) “Retainable offense” means:

(a) A felony; or

(b) A serious misdemeanor as defined by rule adopted under [section 67-3003\(2\), Idaho Code](#).

(12) “Subject of record” means the person who is or may be the primary subject of a record of criminal justice information or any representative of the person designated by power of attorney or notarized authorization.

(13) “Working day” means each day except Saturday, Sunday, or a legal state holiday.

History.

[I.C., § 67-3001](#), as added by 1999, ch. 249, § 2, p. 638; am. 2000, ch. 469, § 135, p. 1450.

STATUTORY NOTES

Cross References.

Bureau of criminal identification, § 67-3003.

Idaho state police, § 67-2901 et seq.

Records exempt from disclosure, § 74-105.

Compiler's Notes.

For further information on the Idaho bureau of criminal identification, referred to in subsection (2), see *<https://isp.idaho.gov/bci>*.

§ 67-3002. Positive identification — Fingerprints required. — To ensure positive identification and system integrity, criminal history records shall be supported by fingerprints, which may be maintained manually, electronically or on optical disk. The records shall be linked to an automated fingerprint identification system. For the purpose of including prescribed information categories, the system may be linked with databases maintained by other state agencies. Whenever possible, the reporting of information by criminal justice agencies relating to the categories identified in section 67-3001(4), Idaho Code, shall be conducted electronically or by magnetic medium. Any technology used in this process will conform to the standards, guidelines and conventions established by the Idaho technology authority.

History.

I.C., § 67-3002, as added by 1999, ch. 249, § 2, p. 638; am. 2014, ch. 97, § 36, p. 265; am. 2015, ch. 244, § 53, p. 1008.

STATUTORY NOTES

Cross References.

Idaho technology authority, § 67-832.

Amendments.

The 2014 amendment, by ch. 97, substituted “Idaho technology authority” for “information technology resource management council” in the last sentence.

The 2015 amendment, by ch. 244, purported to amend this section, but the change had already been implemented through S.L. 2014, ch. 97, § 36.

§ 67-3003. Duties of the department. — (1) The department shall establish a bureau of criminal identification to:

- (a) Serve as the state's central repository of criminal history records;
- (b) Conduct criminal background checks as authorized by law or rule and provide fingerprint identification services;
- (c) Obtain and electronically file information relating to in-state stolen vehicles and in-state wanted persons;
- (d) Establish and maintain an automated fingerprint identification system;
- (e) Establish a uniform crime reporting system for the periodic collection and reporting of crimes, and compile and publish statistics and other information on the nature and extent of crime in the state;
- (f) Maintain, pursuant to department rule, other identification information, which may include, but is not limited to, palm prints and photographs;
- (g) Cooperate with other criminal justice agencies of the state, state and federal courts, the criminal records repositories of other states, the federal bureau of investigation criminal justice information services, the national law enforcement telecommunications system, and other appropriate agencies and systems, in the operation of an effective interstate and national system of criminal identification, records and statistics;
- (h) Develop and implement a training program to assist criminal justice agencies with the recordkeeping and reporting requirements of this chapter; and
- (i) Obtain and electronically transmit to the national instant criminal background check system (NICS), in accordance with federal law, information relating to eligibility to receive or possess a firearm pursuant to state or federal law. Upon notification to the department that the basis for which any such information previously transmitted to the NICS does not apply or no longer applies, the department shall, as soon as practicable, notify the NICS of such change and shall update, correct, modify or remove such information from the NICS database.

(2) In accordance with chapter 52, title 67, Idaho Code, the department may adopt rules necessary to implement the provisions of this chapter. Rules relating to information maintained and reported by the court shall be made after consultation with and approval by the Idaho supreme court.

History.

I.C., § 67-3003, as added by 1999, ch. 249, § 2, p. 638; am. 2010, ch. 267, § 2, p. 674.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 267, added paragraph (1)(i).

Compiler's Notes.

For further information on the Idaho bureau of criminal identification, referred to in the introductory paragraph, see <https://isp.idaho.gov/bci>.

For more information on the federal bureau of investigation criminal justice information services, referred to in paragraph (1)(g), see <https://www.fbi.gov/services/cjis>.

For more information on the national law enforcement telecommunications systems, referred to in paragraph (1)(g), see <https://www.nlets.org>.

For more information on the national instant criminal background check system, referred to in paragraph (1)(i), see <https://www.fbi.gov/services/cjis/nics>.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

§ 67-3004. Fingerprinting and identification. — (1) The bureau shall:

- (a) Obtain and file fingerprints, physical descriptions and any other available identifying data on persons who have been arrested or served a criminal summons in this state for a retainable offense;
- (b) Accept fingerprints and other identifying data taken by a law enforcement agency for the purpose of identification or conducting a records review for criminal justice purposes; and
- (c) Process latent fingerprints generated from crime scenes, evidence and law enforcement agencies through the automated fingerprint identification system for prospective identification.

(2) The bureau shall establish policy regarding an arrest fingerprint card and procedures for the taking of fingerprints under this section.

(3) When a person is arrested for a retainable offense, with or without a warrant, fingerprints of the person shall be taken by the law enforcement agency making the arrest. A law enforcement agency may contract or make arrangements with a jail or correctional facility or other criminal justice agency to take the required fingerprints from a person who is arrested by the law enforcement agency.

(4) If a person was arrested and is in the custody of a law enforcement agency, jail or correctional facility and a felony summons or information is filed for an offense separate from the offense for which the person is in custody, the agency, jail or correctional facility shall take the fingerprints of the person in connection with the new offense.

(5) At the initial court appearance or arraignment of a person for an offense pursuant to a felony summons or information, the court, upon notice from the prosecuting attorney, shall order a law enforcement agency to fingerprint the person if he has not been previously fingerprinted for the same offense.

(6) When a defendant is convicted or otherwise adjudicated for a felony offense for which the defendant has not been previously fingerprinted, the court shall order, upon notice from the prosecuting attorney, a law

enforcement agency to fingerprint the defendant as a condition of sentence, probation or release.

(7) When a person is received by a state correctional facility, the department of correction shall ensure that legible fingerprints of the person are taken and submitted to the bureau.

(8) When the bureau receives fingerprints of a person in connection with an arrest or incarceration, the bureau shall make a reasonable effort to confirm within five (5) working days the identity of the person fingerprinted. In an emergency situation when an immediate positive identification is needed, a criminal justice agency may request the department to provide immediate identification service.

(9) If the arresting officer, the law enforcement agency that employs the officer, or the jail or correctional facility where fingerprints were taken is notified by the bureau that fingerprints taken under this section are not legible, the officer, agency or facility shall make a reasonable effort to obtain a legible set of fingerprints. If legible fingerprints cannot be obtained within a reasonable period of time, and if illegible fingerprints were taken under a court order, the officer or agency shall inform the court, which shall order the defendant to submit to fingerprinting again.

(10) Any person who was arrested or served a criminal summons and who subsequently was not charged by indictment or information within one (1) year of the arrest or summons and any person who was acquitted of all offenses arising from an arrest or criminal summons, or who has had all charges dismissed, may have the fingerprint and criminal history record taken in connection with the incident expunged pursuant to the person's written request directed to the department and may have the official court file thereof sealed. This provision shall not apply to any dismissal granted pursuant to [section 19-2604\(1\), Idaho Code](#).

History.

[I.C., § 67-3004](#), as added by 1999, ch. 249, § 2, p. 638; am. 2010, ch. 33, § 1, p. 63; am. 2018, ch. 286, § 1, p. 674.

STATUTORY NOTES

Cross References.

Department of correction, § 20-201 et seq.

Amendments.

The 2010 amendment, by ch. 33, rewrote paragraph (1)(c), which formerly read: “Have the capacity to conduct crime scene investigations for the detection and identification of latent fingerprints.”

The 2018 amendment, by ch. 286, in subsection (10), in the first sentence, inserted “or who has had all charges dismissed” near the beginning and added “and may have the official court file thereof sealed” at the end and added the last sentence.

RESEARCH REFERENCES

Idaho Law Review. — Collateral Damage in Idaho: A Proposal to Strengthen the Effect of the Juvenile Corrections Act, Jenny V. Gallegos, 55 Idaho L. Rev. 379 (2019).

§ 67-3005. Records and reporting — Duties of other criminal justice agencies and the court. — (1) Each criminal justice agency shall:

(a) Transmit to the department, when and in the manner prescribed by this chapter or any rules adopted pursuant thereto, all information required by [section 67-3001\(4\), Idaho Code](#), for inclusion in the criminal history records;

(b) Provide the department and its accredited agents access to source records and files for the purpose of assessing the accuracy, completeness and timeliness of the criminal history records maintained by the department; and

(c) Cooperate with the department so that it may properly perform the duties that are mandated by this chapter.

(2) When a law enforcement agency or jail facility fingerprints a person as required by [section 67-3004, Idaho Code](#), the agency or facility shall initiate the reporting process by transmitting to the department the authorized and fully completed arrest fingerprint card and identification information within ten (10) working days after the arrest, arraignment or court-ordered fingerprinting. A law enforcement agency or jail facility required to take fingerprints shall ensure that the process control number on the arrest fingerprint card is transmitted to the appropriate court clerk for recording in the court's automated information system. When appropriate, the law enforcement agency or jail facility shall report, in a manner and in a form prescribed by the department, the disposition relating to the charge or arrest.

(3) The clerk of the court exercising jurisdiction over a case relating to a retainable offense shall report the court disposition of the case to the department, in a manner and format determined by the department after consultation with and approval by the Idaho supreme court.

(4) The department of correction shall report, in a manner and on a form prescribed by the department, information on an individual committed to and released from a state correctional facility.

(5) The department of correction shall report, in a manner and on a form prescribed by the department, information on an individual committed to and released from its supervision as a result of probation, parole or other judicial action.

(6) With the approval of the department, a criminal justice agency or the court may report required information by electronic medium either directly to the department or indirectly through a sharing of information via the linkage of automated systems or databases.

History.

I.C., § 67-3005, as added by 1999, ch. 249, § 2, p. 638.

STATUTORY NOTES

Cross References.

Department of correction, § 20-201 et seq.

§ 67-3006. Reporting of uniform crime information. — A law enforcement agency shall submit to the department, at the time, in the manner, and in the form prescribed by the department, data regarding crimes committed within that agency's jurisdiction. The department shall publish an annual report, available no later than July 1 of the following year, containing the statistical information gathered under this section that relates to the number and nature of criminal offenses, arrests, and clearances, and any other data the director determines to be appropriate relating to the method, frequency, cause and prevention of crime.

History.

I.C., § 67-3006, as added by 1999, ch. 249, § 2, p. 638.

§ 67-3007. Completeness, accuracy and security of criminal history records. — (1) The department shall:

- (a) Adopt reasonable procedures to ensure that criminal justice information it maintains is accurate and complete;
- (b) Notify a criminal justice agency or persons known to have received information of a material nature that is inaccurate or incomplete;
- (c) Provide adequate procedures and facilities to protect criminal justice information from unauthorized access and from accidental or deliberate damage; and
- (d) Provide procedures for screening, supervising and disciplining department personnel in order to minimize the risk of security violations.

(2) The department shall, by rule, adopt procedures for a person to review and challenge the accuracy and completeness of an Idaho criminal history record pertaining to that person. The rules shall provide for administrative review of any challenge and the necessary correction of inaccurate and incomplete information.

(3) The department of health and welfare shall furnish monthly to the department without fee a listing showing the name, date of birth, and social security number of each Idaho resident who has died during the preceding month. The listing shall be used only for the administration of criminal justice and shall not be disseminated by the department.

(4) The department shall review each year a sample of records held by randomly selected agencies to verify adherence to the requirements of this chapter and other applicable state and federal laws.

(5) The department is immune from any civil or criminal liability arising from the accuracy or completeness of any records it receives from the federal bureau of investigation or another state central repository, if the department acts in good faith.

History.

I.C., § 67-3007, as added by 1999, ch. 249, § 2, p. 638.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

§ 67-3008. Release of criminal history record information. — (1) All units of state, city and local governments, as well as any agency of the state created by the legislature which require by statute, rule, or local or county ordinance, fingerprinting of applicants or licensees, are authorized to submit fingerprints to the bureau for examination and further submission, if necessary, to the federal bureau of investigation. The bureau shall be the state's sole source of fingerprint submissions for criminal justice and applicant or licensing purposes to the federal bureau of investigation.

(2) The department shall provide copies of or communicate information from criminal history records to the following:

- (a) Criminal justice agencies and the court;
- (b) A person or public or private agency, upon written application on a form approved by the director and provided by the department, subject to the following restrictions:
 - (i) A request for criminal history records must be submitted in writing or as provided by rule. However, the department shall accept a request presented in person by the subject of the record; and
 - (ii) The request must identify a specific person by name and date of birth. Fingerprints of the person named may be required to establish positive identification; and
 - (iii) Responding to the request does not interfere with the secure and orderly conduct of the department and would not substantially prejudice or prevent the carrying out of the functions of the department; and
 - (iv) A record of an arrest that does not contain a disposition after twelve (12) months from the date of arrest may only be disseminated by the department to criminal justice agencies, to the subject of the record, or to a person requesting the criminal history information with a signed release from the subject of the record; and
 - (v) Any release of criminal history data by the department shall prominently display the statement: "AN ARREST WITHOUT

DISPOSITION IS NOT AN INDICATION OF GUILT.”

(3) Judicial review of the department’s denial of a request for records shall be in accordance with the provisions of [section 74-115, Idaho Code](#).

(4) A request for a criminal history record by a criminal justice agency or a court shall take precedence over all other requests. The department shall adopt rules to set forth the manner by which criminal justice agencies and courts without direct access to the public safety and security information system established by [section 19-5202, Idaho Code](#), may request Idaho criminal history record information.

(5) Unless otherwise provided by law, access authorized under this section to criminal history records does not create a duty upon a person, employer, private agency, or public agency to examine the criminal history record of an applicant, employee or volunteer.

(6) A person or private agency, or public agency, other than the department, shall not disseminate criminal history record information obtained from the department to a person or agency that is not a criminal justice agency or a court without a signed release of the subject of record or unless otherwise provided by law.

(7) Direct access to criminal history record information is regulated by chapter 52, title 19, Idaho Code, and the rules adopted pursuant to that chapter.

History.

[I.C., § 67-3008](#), as added by 1999, ch. 249, § 2, p. 638; am. 2005, ch. 115, § 7, p. 371; am. 2015, ch. 141, § 171, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “74-115” for “9-343” in subsection (3).

§ 67-3009. Criminal penalties. — (1) It is unlawful for a person for personal gain to request, obtain, or attempt to obtain criminal history records under false pretenses or willfully communicate or attempt to communicate criminal history records to any agency or person not authorized to receive the information by law. A violation of this subsection is a misdemeanor.

(2) It is unlawful for a person to willfully solicit, accept or agree to accept from another any pecuniary benefit as consideration for either willfully falsifying criminal history records or for willfully requesting, obtaining, or seeking to obtain criminal history records for a purpose not authorized by law. A violation of this subsection is a felony, and the punishment shall be a fine up to ten thousand dollars (\$10,000) and imprisonment in a state prison not exceeding five (5) years.

History.

I.C., § 67-3009, as added by 1999, ch. 249, § 2, p. 638.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

§ 67-3010. Fees authorized. — The department, by rule, shall establish and collect fees for taking fingerprints and for processing a request for criminal record review of state and federal files when the purpose is other than the administration of criminal justice. The department may also collect and account for fees charged by the federal bureau of investigation for processing fingerprints forwarded to the federal bureau of investigation by the department.

History.

I.C., § 67-3010, as added by 1999, ch. 249, § 2, p. 638; am. 2008, ch. 48, § 1, p. 120.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 48, inserted “of state and federal files” in the first sentence.

§ 67-3011. Noncompliance with reporting requirements. — (1) If any criminal justice agency subject to the fingerprinting and reporting requirements under section 67-3005, Idaho Code, fails to comply with such requirements, the director may order the bureau to deny the agency access to criminal history records until the agency comes into compliance with reporting requirements prescribed by this chapter.

(2) On the request of a criminal justice agency, the department may provide the agency with technical staff assistance to achieve or maintain compliance with reporting requirements.

History.

I.C., § 67-3011, as added by 1999, ch. 249, § 2, p. 638.

§ 67-3012. National crime prevention and privacy compact. — (1) Findings. The legislature finds that there is a need to improve the quality and completeness of criminal history records made available to a state when it conducts national fingerprint-based record checks for applicant or noncriminal justice purposes. Criminal history records automated and held at the state level are the most complete and accurate sources for fingerprint-based records checks for authorized agencies or organizations screening persons seeking positions of trust. Ratification of the “National Crime Prevention and Privacy Compact” will provide direct access to criminal history records maintained in other member states.

(2) Enactment. The national crime prevention and privacy compact is hereby enacted into law and entered into with all other jurisdictions legally joined therein in the form substantially as follows:

The contracting parties agree to the following:

Overview

(a) In general. This compact organizes an electronic information sharing system among the federal government and the states to exchange criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment.

(b) Obligations of parties. Under this compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal government and to party states for authorized purposes. The FBI shall also manage the federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I

DEFINITIONS

In this compact:

(1) Attorney general. The term “attorney general” means the attorney general of the United States.

(2) Compact officer. The term “compact officer” means:

(A) With respect to the federal government, an official so designated by the director of the FBI; and

(B) With respect to a party state, the chief administrator of the state’s criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) Council. The term “council” means the compact council established under article VI.

(4) Criminal history records. The term “criminal history records”:

(A) Means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(B) Does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

(5) Criminal history record repository. The term “criminal history record repository” means the state agency designated by the governor or other appropriate executive official or the legislature of a state to perform centralized recordkeeping functions for criminal history records and services in the state.

(6) Criminal justice. The term “criminal justice” includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) Criminal justice agency. The term “criminal justice agency”:

(A) Means:

(i) Courts; and

(ii) A governmental agency or any subunit thereof that:

(I) Performs the administration of criminal justice pursuant to a statute or executive order; and

(II) Allocates a substantial part of its annual budget to the administration of criminal justice; and

(B) Includes federal and state inspectors general offices.

(8) Criminal justice services. The term “criminal justice services” means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) Criterion offense. The term “criterion offense” means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

(10) Direct access. The term “direct access” means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(11) Executive order. The term “executive order” means an order of the president of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law.

(12) FBI. The term “FBI” means the federal bureau of investigation.

(13) Interstate identification system. The term “interstate identification index system” or “III system”:

(A) Means the cooperative federal-state system for the exchange of criminal history records; and

(B) Includes the national identification index, the national fingerprint file and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI.

(14) National fingerprint file. The term “national fingerprint file” means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III system.

(15) National identification index. The term “national identification index” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III system.

(16) National indices. The term “national indices” means the national identification index and the national fingerprint file.

(17) Nonparty state. The term “nonparty state” means a state that has not ratified this compact.

(18) Noncriminal justice purposes. The term “noncriminal justice purposes” means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(19) Party state. The term “party state” means a state that has ratified this compact.

(20) Positive identification. The term “positive identification” means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of subjects’ names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

(21) Sealed record information. The term “sealed record information” means:

(A) With respect to adults, that portion of a record that is:

(i) Not available for criminal justice uses;

(ii) Not supported by fingerprints or other accepted means of positive identification; or

(iii) Subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute that requires action on a sealing petition filed by a particular record subject; and

(B) With respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.

(22) State. The term “state” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II

PURPOSES

The purposes of this compact are to:

(1) Provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) Require the FBI to permit use of the national identification index and the national fingerprint file by each party state, and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under article VI;

(3) Require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under article VI;

(4) Provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes; and

(5) Require the FBI and each party state to adhere to III system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III

RESPONSIBILITIES OF COMPACT PARTIES

(a) FBI responsibilities. The director of the FBI shall:

(1) Appoint an FBI compact officer who shall:

(A) Administer this compact within the department of justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to article V(c);

(B) Ensure that compact provisions and rules, procedures, and standards prescribed by the council under article VI are complied with by the department of justice and the federal agencies and other agencies and organizations referred to in article III(a)(1)(A); and

(C) Regulate the use of records received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies;

(2) Provide to federal agencies and to state criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in article IV, including:

(A) Information from nonparty states; and

(B) Information from party states that is available from the FBI through the III system, but is not available from the party state through the III system;

(3) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

(4) Modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in article V.

(b) State responsibilities. Each party state shall:

(1) Appoint a compact officer who shall:

(A) Administer this compact within that state;

(B) Ensure that compact provisions and rules, procedures, and standards established by the council under article VI are complied with

in the state; and

(C) Regulate the in-state use of records received by means of the III system from the FBI or from other party states;

(2) Establish and maintain a criminal history record repository, which shall provide:

(A) Information and records for the national identification index and the national fingerprint file; and

(B) The state's III system-indexed criminal history records for noncriminal justice purposes described in article IV;

(3) Participate in the national fingerprint file; and

(4) Provide and maintain telecommunications links and related equipment necessary to support the services set forth in this compact.

(c) Compliance with III system standards. In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation.

(d) Maintenance of record services.

(1) Use of the III system for noncriminal justice purposes authorized in this compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(2) Administration of compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.

ARTICLE IV

AUTHORIZED RECORD DISCLOSURES

(a) State criminal history record repositories. To the extent authorized by [section 552a of title 5, United States Code](#) (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding sealed records) to state criminal history record

repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general and that authorizes national indices checks.

(b) Criminal justice agencies and other governmental or nongovernmental agencies. The FBI, to the extent authorized by [section 552a of title 5, United States Code](#) (commonly known as the “Privacy Act of 1974”), and state criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general, that authorizes national indices checks.

(c) Procedures. Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures, consistent with this compact, and with rules, procedures, and standards established by the council under article VI, which procedures shall protect the accuracy and privacy of the records, and shall:

- (1) Ensure that records obtained under this compact are used only by authorized officials for authorized purposes;
- (2) Require that subsequent record checks are requested to obtain current information whenever a new need arises; and
- (3) Ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate “no record” response is communicated to the requesting official.

ARTICLE V

RECORD REQUEST PROCEDURES

(a) Positive identification. Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) Submission of state requests. Each request for a criminal history record check utilizing the national indices made under any approved state

statute shall be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another state criminal history record repository or the FBI.

(c) Submission of federal requests. Each request for criminal history record checks utilizing the national indices made under federal authority shall be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which such request originated. Direct access to the national identification index by entities other than the FBI and state criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) Fees. A state criminal history record repository or the FBI:

(1) May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(2) May not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) Additional search.

(1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.

(2) If, with respect to a request forwarded by a state criminal history record repository under paragraph (1) of this subsection, the FBI positively identifies the subject as having a III system-indexed record or records:

(A) The FBI shall so advise the state criminal history record repository; and

(B) The state criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

ARTICLE VI

ESTABLISHMENT OF COMPACT COUNCIL

(a) Establishment.

(1) In general. There is established a council to be known as the “compact council,” which shall have the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes.

(2) Organization. The council shall:

(A) Continue in existence as long as this compact remains in effect;

(B) Be located, for administrative purposes, within the FBI; and

(C) Be organized and hold its first meeting as soon as practicable after the effective date of this compact.

(b) Membership. The council shall be composed of fifteen (15) members, each of whom shall be appointed by the attorney general, as follows:

(1) Nine (9) members, each of whom shall serve a two (2) year term, who shall be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that, in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states shall be eligible to serve on an interim basis.

(2) Two (2) at-large members, nominated by the director of the FBI, each of whom shall serve a three (3) year term, of whom:

(A) One (1) shall be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

(B) One (1) shall be a representative of the noncriminal justice agencies of the federal government.

(3) Two (2) at-large members, nominated by the chairman of the council, once the chairman is elected pursuant to article VI(c), each of whom shall serve a three (3) year term, of whom:

(A) One (1) shall be a representative of state or local criminal justice agencies; and

(B) One (1) shall be a representative of state or local noncriminal justice agencies.

(4) One (1) member, who shall serve a three (3) year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.

(5) One (1) member, nominated by the director of the FBI, who shall serve a three (3) year term, and who shall be an employee of the FBI.

(c) Chairman and vice chairman.

(1) In general. From its membership, the council shall elect a chairman and a vice chairman of the council, respectively. Both the chairman and vice chairman of the council:

(A) Shall be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chairman may be an at-large member; and

(B) Shall serve a two (2) year term and may be reelected to only one (1) additional two (2) year term.

(2) Duties of vice chairman. The vice chairman of the council shall serve as the chairman of the council in the absence of the chairman.

(d) Meetings.

(1) In general. The council shall meet at least once each year at the call of the chairman. Each meeting of the council shall be open to the public. The council shall provide prior public notice in the federal register of each meeting of the council, including the matters to be addressed at such meeting.

(2) Quorum. A majority of the council or any committee of the council shall constitute a quorum of the council or of such committee,

respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures, and standards. The council shall make available for public inspection and copying at the council office within the FBI, and shall publish in the federal register, any rules, procedures, or standards established by the council.

(f) Assistance from FBI. The council may request from the FBI such reports, studies, statistics, or other information or materials as the council determines to be necessary to enable the council to perform its duties under this compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees. The chairman may establish committees as necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII

RATIFICATION OF COMPACT

This compact shall take effect upon being entered into by two (2) or more states as between those states and the federal government. Upon subsequent entering into this compact by additional states, it shall become effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing state.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

(a) Relation of compact to certain FBI activities. Administration of this compact shall not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the federal advisory committee act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) No authority for nonappropriated expenditures. Nothing in this compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) Relating to public law 92-544. Nothing in this compact shall diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof, under the departments of state, justice, and commerce, the judiciary, and related agencies appropriation act, 1973 (public law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX

RENUNCIATION

(a) In general. This compact shall bind each party state until renounced by the party state.

(b) Effect. Any renunciation of this compact by a party state shall:

(1) Be effected in the same manner by which the party state ratified this compact; and

(2) Become effective one hundred eighty (180) days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

ARTICLE X

SEVERABILITY

The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state, or to the constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact shall remain in full force and effect as to the remaining party states

and in full force and effect as to the party state affected, as to all other provisions.

ARTICLE XI

ADJUDICATION OF DISPUTES

(a) In general. The council shall:

(1) Have initial authority to make determinations with respect to any dispute regarding:

(A) Interpretation of this compact;

(B) Any rule or standard established by the council pursuant to article VI; and

(C) Any dispute or controversy between any parties to this compact; and

(2) Hold a hearing concerning any dispute described in paragraph (1) of this subsection at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. Such decision shall be published pursuant to the requirements of article VI(e).

(b) Duties of FBI. The FBI shall exercise immediate and necessary action to preserve the integrity of the III system, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the council holds a hearing on such matters.

(c) Right of appeal. The FBI or a party state may appeal any decision of the council to the attorney general, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court shall be removed to the appropriate district court of the United States in the manner provided by [section 1446 of title 28, United States Code](#), or other statutory authority.

History.

[I.C., § 67-3012](#), as added by 2005, ch. 69, § 1, p. 234.

STATUTORY NOTES

Federal References.

National crime prevention and privacy compact, [30 USCS § 40316](#).

Compiler's Notes.

The national crime prevention and privacy compact had been adopted in over 30 states, including the neighboring states of Oregon, Nevada, Wyoming, and Montana.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-3013. Appointment of compact officer. — The director of the Idaho state police shall appoint an Idaho state police employee as compact officer for the purpose of complying with article III of the national crime prevention and privacy compact, as set forth in section 67-3012, Idaho Code.

History.

I.C., § 67-3013, as added by 2005, ch. 69, § 2, p. 234.

STATUTORY NOTES

Cross References.

Director of Idaho state police, § 67-2901.

§ 67-3014. Expungement for victims of human trafficking. — (1) The provisions of this section shall only apply to individuals who are victims of human trafficking as defined in section 18-8602, Idaho Code, and shall only apply to arrests, criminal prosecutions and convictions that are the result of acts induced by human traffickers.

(2) Any person who was arrested, prosecuted and/or convicted of a violation of [section 18-5613, Idaho Code](#), or any other offense determined by the court to be appropriate, except convictions for offenses for which a defense of coercion would not be available and that was committed during a period of time when the person was a victim of human trafficking and that was the result of acts required by the human trafficker, may bring a petition under the provisions of this section to vacate such conviction and/or to expunge the criminal history records taken in connection with the conviction, including the arrest and prosecution resulting in such conviction or to expunge any criminal history records related to any arrest or prosecution that resulted in a dismissal or acquittal. Actions brought under this section are civil actions and the petitioner shall not be entitled to the appointment of counsel. Jury trial shall not be available in actions brought under this section.

(3) Relief shall not be available under this section if the petitioner raised the affirmative defense of coercion at trial and was convicted.

(4) Any action brought under this section shall be filed within a reasonable time after the arrest, prosecution or conviction that is the subject of the action brought under this section, except that a petition to expunge an arrest that did not result in a prosecution shall not be brought until two (2) years after the arrest.

(5) If an action is filed under this section while a criminal case against the petitioner is pending and the charges in the criminal case are the same as the ones sought to be expunged or vacated in the action under this section, then the petition under this section shall be dismissed without prejudice.

(6) The petition filed in this action shall:

(a) Identify the petitioner, the case number and court in which any conviction or prosecution resulting in acquittal or dismissal occurred, the date and place of arrest and the agency that performed any arrest;

(b) Include a short, plain statement under oath of the facts demonstrating that the petitioner is entitled to relief under the provisions of this section, including the identity of the human trafficker to the best of the petitioner's knowledge; the approximate date, place and manner in which the petitioner became a victim of human trafficking; the petitioner's age at the time the petitioner became a victim of human trafficking; and how the petitioner became involved in the activities resulting in the arrest, prosecution and/or conviction; and

(c) Include a request for an order vacating the conviction and/or to expunge the criminal history records taken in connection with the arrest, conviction or prosecution.

(7) If the petition is in regard to a prosecution resulting in acquittal or dismissal or a prosecution resulting in a conviction, then the petitioner shall serve a copy of the petition on the prosecuting attorney's office that handled such prosecution. If the petition is in regard to an arrest that did not result in a prosecution, then the petitioner shall serve a copy of the petition on the police agency that effected the arrest. If such prosecuting attorney or police agency desires to contest the action under this section, an answer shall be filed in accordance with the Idaho rules of civil procedure.

(8) The pretrial in any action under this section shall be set not later than sixty (60) days after the petition is served.

(9) Evidence documenting the person's status as a victim of human trafficking at the time of the offense from a federal, state or local governmental agency shall create a rebuttable presumption that the person was a victim of human trafficking at the time of the offense but shall not be required to obtain relief under this section.

(10) If the court finds that the petitioner has demonstrated by a preponderance of the evidence that the petitioner's participation in the activities that resulted in the arrest, prosecution and/or conviction, that is the subject of the petition, occurred during a period of time when the petitioner was a victim of human trafficking and that the petitioner's

participation in the activities that resulted in the arrest, prosecution and/or conviction was the result of acts required by the human trafficker, then the court shall vacate the conviction, if any, and order that the criminal history records taken in connection with the arrest, prosecution and conviction be expunged. The court shall send notice of the order of expungement to each public office or agency that the court has reason to believe may have a record pertaining to the arrest, prosecution and conviction that is the subject of the order of expungement.

(11) If the court enters an order of expungement, then the arrest and all other proceedings that are the subject of the order of expungement shall be considered not to have occurred and the criminal history records taken in connection with the conviction shall be expunged. The criminal history records that are expunged shall not be used against the petitioner for any purpose.

(12) All pleadings and records filed with the court pursuant to the provisions of this section shall be sealed, and any hearing on an action under this section shall be closed to the public. Any information obtained in any pleading or other filing or at a hearing in an action under this section may be used to investigate and prosecute human traffickers.

(13) Upon the entry of an order of expungement under this section, the petitioner shall be deemed to have never been arrested, prosecuted or convicted with respect to the matters that are the subject of the order of expungement, and the petitioner may so swear under oath.

(14) The state of Idaho and any of its political subdivisions shall not be subject to any civil liability as a result of any arrest, conviction or prosecution that resulted in a dismissal or acquittal that is expunged pursuant to the provisions of this section.

(15) For the purposes of this section:

(a) “Convicted” or “conviction” means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

(b) “Expunge” or “expungement” means to destroy, delete or erase a criminal history record as appropriate for the record’s physical or electronic form or characteristic so that the record is permanently

irretrievable. Provided however, that all records in a petitioner's case conducted in accordance with the provisions of this section that are in the custody of the court shall be sealed, and all references to an arrest and/or prosecution resulting in dismissal or acquittal or conviction shall be removed from all indices and records available to the public. A special index of the expungement proceedings and records shall be kept by the court ordering expungement but shall not be available to the public and shall be revealed only to the petitioner or upon order of a court of competent jurisdiction.

(c) "Prosecuting attorney" has the same meaning as in [section 18-6719, Idaho Code](#).

(d) "Victim of human trafficking" means a person who is or who was a victim of a violation of [section 18-8602, Idaho Code](#), regardless of whether any person has been convicted of or pled guilty to a violation of [section 18-8602, Idaho Code](#).

History.

[I.C., § 67-3014](#), as added by 2015, ch. 308, § 1, p. 1212.

Chapter 31
DEPARTMENT OF HEALTH AND WELFARE —
MISCELLANEOUS PROVISIONS

Sec.

67-3101 — 67-3104. [Repealed.]

67-3105. State grants-in-aid.

67-3106. Bureau of industrial hygiene created — Powers and duties.
[Repealed.]

67-3107. [Obsolete.]

67-3108 — 67-3120. [Repealed.]

§ 67-3101 — 67-3104. Department of public welfare — Bureau of child hygiene. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1919, ch. 8, § 35, p. 43; 1919, ch. 121, §§ 1, 2, p. 407; C.S., §§ 342-344; I.C.A., §§ 65-3001 — 65-3003; I.C.A., § 65-3004, as added by 1937, ch. 194, § 1, p. 328, were repealed by S.L. 1974, ch. 23, § 1, p. 633.

§ 67-3105. State grants-in-aid. — In administering any funds appropriated or made available to the director of the department of health and welfare, the director shall have the power:

1. To require as a condition for receiving grants-in-aid, that cooperating counties and municipalities shall bear the proportion of the total expenses of furnishing services or aid as is fixed by law relating to such grants.

2. To terminate any grants-in-aid to any county or municipality if the laws providing such grants-in-aid and the minimum standards prescribed by the director thereunder are not complied with.

History.

I.C.A., § 65-3005, as added by 1937, ch. 194, § 2, p. 328; am. 1974, ch. 23, § 180, p. 633.

STATUTORY NOTES

Cross References.

Director of department of health and welfare, § 56-1002 et seq.

Effective Dates.

Section 4 of S.L. 1937, ch. 194 declared an emergency. Approved March 17, 1937.

CASE NOTES

Cited *State ex rel. Taylor v. Robinson*, 59 Idaho 485, 83 P.2d 983 (1938).

§ 67-3106. Bureau of industrial hygiene created — Powers and duties.[Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1939, ch. 136, § 1, p. 243; am. 1974, ch. 23, § 181, p. 633, was repealed by S.L. 1988, ch. 131, § 1.

§ 67-3107. Compensation and salaries. [Obsolete.]

STATUTORY NOTES

Compiler's Notes.

This section is considered obsolete since the appropriation to which it had reference, section 2 of S.L. 1939, ch. 136, is no longer in effect.

§ 67-3108 — 67-3120. Commission on alcoholism. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1965, ch. 184, §§ 1-13, p. 388, were repealed by S.L. 1969, ch. 275, § 1.

Chapter 32

DEPARTMENT OF PUBLIC WORKS

Sec.

67-3201, 67-3202. [Repealed.]

67-3203, 67-3203a. [Amended and Redesignated.]

67-3204, 67-3205. [Repealed.]

67-3206. Inventory of real property owned or leased by state in Boise.
[Repealed.]

**§ 67-3201. Department of public works — Powers and duties.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1919, ch. 8, § 36, p. 43; C.S., § 345; I.C.A., § 65-3101; am. 1933, ch. 165, § 1, p. 295; am. 1935 (2d E.S.), ch. 5, § 1, p. 12; am. 1937, ch. 248, § 1, p. 446; am. 1939, ch. 72, § 1, p. 124; am. 1941, ch. 94, § 1, p. 171, was repealed by S.L. 1985, ch. 253, § 1.

§ 67-3202. Power to acquire and dispose of land. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1919, ch. 47, § 1, p. 147; C.S., § 346; I.C.A., § 65-3102; am. 1945, ch. 121, § 1, p. 188, was repealed by S.L. 1951, ch. 93, § 36.

§ 67-3203, 67-3203a. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former §§ 67-3203 and 67-3203a were amended and redesignated as §§ 67-5732a and 67-5732b, respectively, and were subsequently repealed by S.L. 1974, ch. 34, § 1.

§ 67-3204, 67-3205. Capitol building postal system. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised I.C., §§ 67-3204, 67-3205, as added by 1950 (E.S.), ch. 16, §§ 1, 2, p. 28; am. 1951, ch. 24, § 1, p. 37; am. 1953, ch. 79, §§ 2, 3, p. 102, were repealed by S.L. 1969, ch. 216, § 4. For present comparable law, see §§ 67-5749, 67-5750.

§ 67-3206. Inventory of real property owned or leased by state in Boise. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 336, § 1, p. 972, was repealed by S.L. 2009, ch. 5, § 1.

Chapter 33
DEPARTMENT OF WATER RESOURCES

Sec.

67-3301. Powers and duties.

§ 67-3301. Powers and duties. — The department of water resources shall have power:

1. To exercise the rights, powers and duties vested by law in the state engineer [department of water resources].

2. To exercise the rights, powers and duties vested by law in the state board of land commissioners so far as their duties relate to the administration of the Carey Act. Through this provision the department has authority to convey to equitable claimants, their heirs, successors or assigns, title to lands retained in state ownership which were patented to the state under the Carey Act prior to July 1, 1931, provided that the director determines that equitable claims to such lands have accrued prior to July 1, 1982, and are based upon the cultivation or improvement of such lands, or the payment of property taxes thereon. Title to any such lands for which the director determines that an equitable claim has not accrued shall be conveyed to the state board of land commissioners for retention or disposal in accordance with applicable state law.

History.

1919, ch. 8, § 37, p. 43; C.S., § 350; I.C.A., § 65-3201; am. 1982, ch. 248, § 1, p. 639.

STATUTORY NOTES

Cross References.

Drainage districts, § 42-2901 et seq.

Irrigation and water rights, § 42-101 et seq.

Irrigation districts, Title 43, Idaho Code.

Powers and duties of department of water resources, § 42-1701 et seq.

State board of land commissioners, Idaho **Const., Art. IX, § 7** and **§ 58-101** et seq.

Federal References.

The Carey Act, referred to in subsection 2., is codified as [43 U.S.C.S. § 641](#).

Compiler's Notes.

The words “department of water resources” in the introductory paragraph were substituted for “department of reclamation” on authority of S.L. 1970, ch. 12, § 2, p. 21 as amended by S.L. 1974, ch. 20, § 28, p. 533, compiled as § 42-1801a.

The bracketed insertion at the end of subsection 1 was added by the compiler, as the office of state engineer was abolished by S.L. 1919, ch. 8 and the duties of the office was transferred to the department of reclamation. The department of reclamation later became the department of water administration, which became the department of water resources, pursuant to S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 20, § 28. See § 42-1801a. There are no longer any provisions in the Idaho Code vesting powers in the office of the state engineer.

CASE NOTES

[Forfeiture of reclamation contract.](#)

[Proper party to sue.](#)

[Forfeiture of Reclamation Contract.](#)

Members of state land board have no power to forfeit or declare a forfeiture of a reclamation contract under Carey Act ([43 U.S.C.S. § 641](#)). [Logan v. Carter, 49 Idaho 393, 288 P. 424 \(1930\).](#)

[Proper Party to Sue.](#)

Commissioner of reclamation [now director of department of water resources] is the proper party to bring a suit to secure from court of equity advice and direction in the administration of trust imposed by Carey Act ([43 U.S.C.S. § 641](#)). [Carter v. Blaine County Inv. Co., 45 F.2d 643 \(D. Idaho 1930\).](#)

Cited [Idaho Irrigation Co. v. Gooding, 285 F. 453 \(9th Cir. 1922\); Blaine County Canal Co. v. Hansen, 49 Idaho 649, 292 P. 240 \(1930\); State Water Conservation Bd. v. Enking, 56 Idaho 722, 58 P.2d 779 \(1936\).](#)

Chapter 34
CIVIL STATE DEPARTMENTS — AMENDMENTS AND
REPEALS

Sec.

67-3401. Offices abolished.

67-3402. Department of commerce and industry abolished — Duties transferred.

67-3403. Department of commerce and industry — Transfer of rights, powers and duties to department of finance.

67-3404. Effect of law on constitutional officers.

67-3405. Validity of law.

§ 67-3401. Offices abolished. — The following offices, boards, commissions, arms and agencies of the state government heretofore created by law, are hereby abolished: state board of agriculture and its officers, director of farm markets, state board of horticultural inspection and its officers, state horticultural inspector and his deputies, state bee inspector and his deputies, state livestock sanitary board and its officers, state veterinary surgeon and his assistants, state recorder of brands, state sealer of weights and measures and his deputies and assistants, fish and game warden and his deputies, state banking department, state bank commissioner and his deputies, board of appeal from decisions of bank commissioner, insurance department of state, insurance commissioner and his deputy, state insurance manager, state examiner and his deputy, state depository board and its secretary, commissioner of immigration, labor and statistics, state highway commission and its secretary, state board of medical examiners and its officers, state board of dental examiners and its officers, board of osteopathic examination and registration and its officers, state board of examiners in optometry and its officers, board of pharmacy and its officers, state board of examination and registration of graduate nurses and its officers, examining committee of the state board of health for the examination of embalmers, Idaho state board of veterinary medical examiners and its officers, state board of accountancy, state board of examiners of architects and its officers, state board of examining surveyors and its officers, board of directors of Northern Idaho Sanitarium, its president and secretary, board of directors of Idaho state sanitarium, its president and secretary, board of trustees of soldiers' home, its chairman and secretary, state board of health and its secretary, bureau of vital statistics, state registrar of vital statistics, assistant state registrar of vital statistics, dairy, food and sanitary inspector and his deputies, state chemist, state highway engineer and other employees of state highway commission, trustees of capitol building, Heyburn Park board of control, state engineer, register of state board of land commissioners.

History.

1919, ch. 8, § 38, p. 43; C.S., § 351; I.C.A., § 65-3301.

STATUTORY NOTES

Cross References.

Departments of state government and their officers enumerated, §§ 67-2402, 67-2404, and 67-2405.

§ 67-3402. Department of commerce and industry abolished — Duties transferred. — The department of commerce and industry is hereby abolished and the duties thereof transferred to the department of finance. The office of commissioner of commerce and industry is hereby abolished and the duties thereof transferred to the commissioner of finance [director of the department of finance].

History.

1921, ch. 104, § 1, p. 233; I.C.A., § 65-3302.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion at the end of the section was added by the compiler, as the name of the commissioner of finance was changed to director of the department of finance, pursuant to S.L. 1974, ch. 286, § 1, S.L. 1974, ch. 40, § 3, and S.L. 1974, ch. 24, § 21. See § 67-2701.

§ 67-3403. Department of commerce and industry — Transfer of rights, powers and duties to department of finance. — All the rights, powers and duties which have heretofore been vested in or exercised by the department of commerce and industry or any officer thereof and all rights, powers and duties which may be imposed upon said department of commerce and industry or any officer thereof by any law passed at this session of the legislature are hereby vested in and shall be exercised by the department of finance. Every act done in the exercise of such rights, powers and duties by the department of finance shall have the same legal effect as if done by the department of commerce and industry or its officers. Every person shall be subject to the same obligations and duties with respect to all laws to be administered by the department of finance under this act and shall have the same rights arising from the exercise of such rights, powers and duties as if such rights, powers and duties were exercised by the department of commerce and industry or its officers. Every person shall be subject to the same penalty or penalties, civil or criminal for failure to perform any such obligation or duty or for doing a prohibited act as if such obligation or duty arose from or such act were prohibited in the exercise of such right, power or duty by the department of commerce and industry. Every officer and employee shall for any offense be subject to the same penalty or penalties, civil or criminal as are prescribed by existing law for the same offense by any officer or employee whose powers or duties devolve upon him under this act. All books, records, papers, documents, property, unexpended appropriations and pending business belonging to or pertaining to the department of commerce and industry shall be delivered and transferred to the department of finance.

Whenever reports or notices are now required to be made or given or papers or documents furnished or served by any person to or upon the department of commerce and industry or any officers thereof, the same shall be made, given, furnished or served in the same manner to or upon the department of finance; and every penalty for failure so to do shall continue in effect.

This act shall not affect any act done, ratified or confirmed or right accrued or established or any action or proceeding had or commenced in a

civil or criminal cause by or against or in relation to the department of commerce and industry before this act takes effect; but such actions or proceedings may be prosecuted and continued by the department of finance.

History.

1921, ch. 104, § 9, p. 233; I.C.A., § 65-3303.

STATUTORY NOTES

Compiler's Notes.

The term "this act", throughout this section, refers to S.L. 1921, Chapter 104, which is compiled as §§ 67-2402, 67-2701, 67-3402, 67-3403 and 72-907.

Effective Dates.

Section 11 of S.L. 1921, ch. 104 declared an emergency. Approved March 15, 1921.

§ 67-3404. Effect of law on constitutional officers. — By this act the legislature does not intend to deprive any of the constitutional officers or boards of duties imposed upon them by the express or implied provisions of the constitution.

History.

1919, ch. 8, § 49, p. 43; C.S., § 352; I.C.A., § 65-3304.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1919, Chapter 8, which is compiled as §§ 42-2001, 58-121, 59-1007, 67-1001, 67-2401 to 67-2403, 67-2410, 67-2501 to 67-2504, 67-2510, 67-2511, 67-2513, 67-2701, 67-2901, 67-3301, 67-3401, 67-3404, 67-3405, 67-4203, 67-4204, 72-907, and 72-908.

§ 67-3405. Validity of law. — If any part or section of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole, or any part thereof which can be given effect without the part so decided to be unconstitutional or invalid.

History.

1919, ch. 8, § 50, p. 43; C.S., § 353; I.C.A., § 65-3305.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1919, Chapter 8, which is compiled as §§ 42-2001, 58-121, 59-1007, 67-1001, 67-2401 to 67-2403, 67-2410, 67-2501 to 67-2504, 67-2510, 67-2511, 67-2513, 67-2701, 67-2901, 67-3301, 67-3401, 67-3404, 67-3405, 67-4203, 67-4204, 72-907, and 72-908.

Chapter 35

STATE BUDGET

Sec.

67-3501. Budget function.

67-3501A. Chapter provisions — Administration.

67-3502. Format and preparation of annual budget requests.

67-3503. Preparation and return of estimates. [Repealed.]

67-3504. Duties of administrator of the division.

67-3505. Budget information submitted to governor.

67-3506. Governor to transmit budget document.

67-3507. Executive budget.

67-3508. Expenditure object codes.

67-3509. Time when appropriation available.

67-3510. Expenditure object codes made to conform.

67-3511. Transfer of legislative appropriations.

67-3512. Reduction of legislative appropriations.

67-3512A. Temporary reduction of spending authority.

67-3513. Committees of legislature to consider budget.

67-3513A. Fiscal notes. [Repealed.]

67-3514. Appropriation bills to be prepared by joint finance-appropriations committee.

67-3515. Precedence of budget bills. [Repealed.]

67-3516. Appropriation acts deemed fixed budgets — Rate of expenditure.

67-3517. Requests for spending authority by officials, departments, bureaus and institutions.

67-3518. Investigation of requests by administrator.

67-3519. Employee positions — Procedure for filling.

67-3520. Economic recovery reserve fund. [Repealed.]

67-3521. Encumbering appropriations or excessive expenditures forbidden
— Encumbrances to revert — Approval.

67-3522. Supplemental requests for increases in allotments. [Repealed.]

67-3523. Submission of requests for allotments directed. [Repealed.]

67-3524. Equitable distribution of government overhead expense.
[Repealed.]

67-3525 — 67-3530. [Repealed.]

67-3531. Annual statewide indirect cost allocation plan.

67-3532. Technology infrastructure stabilization fund.

§ 67-3501. Budget function. — The governor shall be the chief budget officer of the state whose duty it shall be to carry out the provisions of this chapter. The division of financial management shall have such duties as may be prescribed by law, and such other duties as may be designated by the governor. No increase in compensation paid to any employee of the state of Idaho, except officers and employees of the legislative and judicial departments, shall be effective until approved by the administrator of the division of financial management; provided, however, that any decision of the administrator of the division may be rejected and changed by the state board of examiners.

History.

1929, ch. 206, § 1, p. 400; I.C.A., § 65-3401; am. 1955, ch. 232, § 1, p. 506; am. 1973, ch. 300, § 1, p. 633; am. 1974, ch. 22, § 26, p. 592; am. 1980, ch. 358, § 9, p. 922; am. 1981, ch. 227, § 1, p. 450.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State board of examiners, § 67-2001 et seq.

Compiler's Notes.

The attempted amendment of this section by § 11 of S.L. 1939, ch. 113, which read: "There is hereby created the bureau of budget. The governor shall be the chief budget officer of the state and the comptroller shall be director of the budget, and shall be subject only to the governor, whose duty it shall be to carry out the provisions of this chapter," was declared unconstitutional by *Wright v. Callahan*, 61 Idaho 167, 99 P.2d 961 (1940).

CASE NOTES

Constitutionality.

The legislature may prescribe officers' duties, in addition to those prescribed by the constitution, but it cannot transfer to other offices, as was attempted by a 1939 amendment of this section, the powers and functions belonging to offices created by the constitution. [Wright v. Callahan](#), 61 Idaho 167, 99 P.2d 961 (1940).

OPINIONS OF ATTORNEY GENERAL

Dedicated Funds.

The dedicated fund divisions of the department of labor and industrial services are required to go through the budgeting and appropriation procedures of §§ 67-3501 — 67-3531 before expending the dedicated funds. OAG 85-7.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state constitutional and statutory balanced budget provisions. [82 A.L.R.6th 497](#).

§ 67-3501A. Chapter provisions — Administration. — The provisions of this chapter shall be administered in accordance with article II, section 1, of the constitution of the state of Idaho, which divides the powers of the government of this state into three (3) distinct departments, the legislative, the executive, and the judicial.

History.

I.C., § 67-3501A, as added by 1981, ch. 227, § 2, p. 450.

§ 67-3502. Format and preparation of annual budget requests. — In the preparation of a state budget, the administrator of the division of financial management shall, not later than the fifteenth day of July, have available for all departments, offices and institutions of the state government forms necessary to prepare budget requests. Such forms, whether in electronic or written format, shall be developed by the administrator of the division and the legislative services office to provide the following information:

(1) For the preceding fiscal year, each of the entities listed above shall report all funds available to them regardless of source, including legislative appropriations, and their expenditures by fund and object of all sums received from all sources, segregated as provided for on the forms.

(2) For the current fiscal year, each of the entities listed above shall report their estimates of all funds available to them regardless of source, including legislative appropriations, and their estimated expenditures by fund and object of all sums received from all sources, segregated as provided for on the forms, including a statement of the purposes for which anticipated funds are expected to be expended.

(3) An estimate of appropriations needed for the succeeding fiscal year, showing each primary program or major objective as a separate item of the request and itemized by object code.

(4) A report concerning the condition and management of programs, program performance, and progress toward accomplishing program objectives.

(5) A report that discloses any known future reductions or eliminations of federal funds reported to the division of financial management under [section 67-1910, Idaho Code](#), and the agency's plan for operating if there is a reduction of ten percent (10%) or more in the federal funds that the state agency receives.

The completed forms shall, not later than the first day of September, except with special permission and agreement of the administrator of the division of financial management and the director of the legislative services

office, be filed in the office of the administrator of the division of financial management and the legislative services office. The legislative and judicial departments and the department of administration's division of public works shall, as early as practicable and in any event no later than the fifteenth day of November, prepare and file in the office of the governor and the legislative services office upon the forms described in this section a report of all of the information required in this section. The judicial department shall include in its filing the budget request of the judicial council as submitted by the judicial council.

History.

I.C., § 67-3502, as added by 1995, ch. 153, § 2, p. 620; am. 1999, ch. 37, § 2, p. 74; am. 2011, ch. 13, § 2, p. 40; am. 2015, ch. 307, § 3, p. 1209; am. 2020, ch. 61, § 1, p. 144.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Expenditure object codes, § 67-3508.

Judicial council, § 1-2101 et seq.

Legislative services office, § 67-701 et seq.

Division of public works, § 67-5705.

Prior Laws.

Former § 67-3502, which comprised 1929, ch. 206, § 2, p. 400; I.C.A., § 65-3402; am. 1955, ch. 232, § 2, p. 506; am. 1967, ch. 424, § 1, p. 1238; am. 1970, ch. 66, § 1, p. 154; am. 1973, ch. 300, § 2, p. 633; am. 1974, ch. 22, § 27, p. 592; am. 1978, ch. 17, § 3, p. 33; am. 1980, ch. 358, § 10, p. 922; am. 1984, ch. 1, § 2, p. 3; am. 1993, ch. 327, § 31, p. 1186, was repealed by S.L. 1995, ch. 153, § 1, effective July 1, 1995.

Amendments.

The 2011 amendment, by ch. 13, added the last sentence in the last paragraph.

The 2015 amendment, by ch. 307, added subsection (5).

The 2020 amendment, by ch. 61, in the second sentence of the last paragraph, inserted “and the department of administration’s division of public works” near the beginning and substituted “fifteenth day of November” for “first day of November” near the middle.

Legislative Intent.

Section 1 of S.L. 2015, ch. 307 provided: “Legislative Intent. It is the intent of the Legislature that federal funds being awarded to or administered by state agencies now constitute a significant portion of state expenditures. To have the Legislature ignore these funds would greatly undermine the authority of the Legislature to appropriate moneys. It is imperative that members of the Legislature, Executive Branch and the general public be able to see all the details of federal funds received by the state so that they can prepare for a possible reduction in federal funds, measure the impact of the programs supported with federal funds and act in the best interest of Idahoans.”

§ 67-3503. Preparation and return of estimates. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1929, ch. 206, § 3, p. 400; I.C.A., § 65-3403; am. 1933, ch. 136, § 1, p. 212; am. 1939, ch. 237, § 1, p. 558; am. 1955, ch. 232, § 3, p. 506; am. 1970, ch. 66, § 2, p. 154; am. 1973, ch. 302, § 1, p. 641; am. 1974, ch. 22, § 28, p. 592; am. 1980, ch. 358, § 11, p. 922; am. 1981, ch. 227, § 3, p. 450; am. 1984, ch. 1, § 3, p. 3; am. 1993, ch. 327, § 32, p. 1186, was repealed by S.L. 1995, ch. 153, § 1, effective July 1, 1995.

§ 67-3504. Duties of administrator of the division. — (1) It shall be the duty of the administrator of the division of financial management to make such further inquiries and investigations as to any item included in any report of expenditures and available funding sources or the estimate for the succeeding fiscal year which may be included in the report and estimates furnished by any department, office or institution, except those of the legislative and judicial departments. In making such investigation he shall be allowed his necessary expenses of travel and subsistence in visiting any institution or department in the state. He may employ additional resources whenever in his discretion it may be necessary to check the items of expenditure or the estimates submitted by any department, office or institution. The administrator of the division shall serve as a clearinghouse for information, data for multi-agency projects not including requests made by the legislative and judicial departments and shall have power to demand and it is hereby made the duty of every department, officer, board, commission, or institution receiving appropriations from the legislature to furnish upon demand any and all information so requested by the administrator of the division.

(2) The administrator of the division, in addition to the duties hereinbefore set forth, shall perform such other duties as the governor as chief budget officer of the state may direct. He shall, as often as required by the governor, prepare and furnish reports as to the condition of any appropriations made by the legislature and shall investigate and report to the governor, when required, concerning available funding from all sources and expenditures made by any department, office or institution of the state. The administrator of the division, or his designated representative, shall also appear at all sessions of the standing committees of the house of representatives and of the senate in charge of appropriations and shall furnish to such committees any information required while said committees are considering the budget.

History.

1929, ch. 206, § 5, p. 400; I.C.A., § 65-3405; am. 1955, ch. 232, § 4, p. 506; am. 1963, ch. 225, § 2, p. 633; am. 1967, ch. 424, § 2, p. 1238; am.

1970, ch. 66, § 4, p. 154; am. 1973, ch. 300, § 3, p. 633; am. 1974, ch. 22, § 29, p. 592; am. 1980, ch. 358, § 12, p. 922; am. 1981, ch. 227, § 4, p. 450; am. 1995, ch. 153, § 3, p. 620.

STATUTORY NOTES

Cross References.

Division of financial management, § 69-1910.

§ 67-3505. Budget information submitted to governor. — The administrator of the division shall, on or before the 20th day of November next succeeding, prepare and submit to the governor, or to the governor-elect if there is one, information for the development of the executive budget as designated in section 67-3502, Idaho Code, including the requests of the legislative and judicial departments as submitted by those departments.

History.

I.C., § 67-3505, as added by 1995, ch. 153, § 4, p. 620; am. 1999, ch. 37, § 3, p. 74.

STATUTORY NOTES

Cross References.

Administrator of division of financial management, § 67-1910.

Prior Laws.

Former § 67-3505, which comprised 1929, ch. 206, § 5, p. 400; I.C.A., § 65-3405; am. 1955, ch. 232, § 4, p. 506; am. 1963, ch. 225, § 2, p. 633; am. 1967, ch. 424, § 2, p. 1238; am. 1970, ch. 66, § 4, p. 154; am. 1973, ch. 300, § 4, p. 633; am. 1974, ch. 22, § 30, p. 592; am. 1981, ch. 227, § 5, p. 450, was repealed by S.L. 1995, ch. 153, § 1, effective July 1, 1995.

§ 67-3506. Governor to transmit budget document. — Not later than five (5) days following the convening of each regular legislative session, the governor shall transmit to the legislature a budget document setting forth his financial plan for the next fiscal year, and having the character and scope set forth. The budget document shall consist of four (4) parts, the nature and contents of which are set forth in section 67-3507, Idaho Code. The requests of the legislative and judicial departments shall be transmitted as submitted by those departments.

History.

I.C., § 67-3506, as added by 1973, ch. 300, § 5, p. 633; am. 1981, ch. 227, § 6, p. 450; am. 1995, ch. 153, § 5, p. 620; am. 2015, ch. 307, § 4, p. 1209.

STATUTORY NOTES

Prior Laws.

Former § 67-3506, which comprised S.L. 1929, ch. 206, § 6, p. 400; I.C.A., § 65-3406, was repealed by S.L. 1970, ch. 66, § 5.

Amendments.

The 2015 amendment, by ch. 307, substituted “four (4) parts” for “three parts” in the second sentence.

Legislative Intent.

Section 1 of S.L. 2015, ch. 307 provided: “Legislative Intent. It is the intent of the Legislature that federal funds being awarded to or administered by state agencies now constitute a significant portion of state expenditures. To have the Legislature ignore these funds would greatly undermine the authority of the Legislature to appropriate moneys. It is imperative that members of the Legislature, Executive Branch and the general public be able to see all the details of federal funds received by the state so that they can prepare for a possible reduction in federal funds, measure the impact of the programs supported with federal funds and act in the best interest of Idahoans.”

§ 67-3507. Executive budget. — The executive budget document shall consist of the following four (4) parts:

(1) Part I of the executive budget document shall consist of a budget message by the governor that shall outline the financial plan of the executive department of the state government for the next fiscal year, describing the important features of the financial plan.

(2) Part II of the budget document shall present in detail for the next fiscal year, as minimum information to be included in Part II, items showing: estimates of agency needs based on the governor's recommendations, to meet the expenditure needs of the state from all available funds classified by agencies and showing the cost of each major program. Part II shall also set forth the governor's recommendations for the capital program. All funds, including federal and local funds and interagency receipts received for any purpose, shall be accounted for in the budget.

(3) Part III of the budget document shall consist of the annual performance plans required in [section 67-1904, Idaho Code](#).

(4) Part IV of the budget document shall consist of the federal funding reports required under [section 67-1917, Idaho Code](#), and the disclosures required under [section 67-3502\(5\), Idaho Code](#).

History.

[I.C., § 67-3507](#), as added by 1973, ch. 300, § 7, p. 633; am. 1993, ch. 168, § 2, p. 425; am. 1994, ch. 109, § 1, p. 242; am. 1995, ch. 153, § 6, p. 620; am. 2005, ch. 339, § 7, p. 1057; am. 2015, ch. 307, § 5, p. 1209.

STATUTORY NOTES

Prior Laws.

Former § 67-3507, which comprised S.L. 1929, ch. 206, § 7, p. 400; I.C.A., § 65-3407, was repealed by S.L. 1973, ch. 800, § 6.

Amendments.

The 2015 amendment, by ch. 307, substituted “four (4) parts” for “three (3) parts” near the end of the introductory paragraph and added subsection (4).

Legislative Intent.

Section 1 of S.L. 2015, ch. 307 provided: “Legislative Intent. It is the intent of the Legislature that federal funds being awarded to or administered by state agencies now constitute a significant portion of state expenditures. To have the Legislature ignore these funds would greatly undermine the authority of the Legislature to appropriate moneys. It is imperative that members of the Legislature, Executive Branch and the general public be able to see all the details of federal funds received by the state so that they can prepare for a possible reduction in federal funds, measure the impact of the programs supported with federal funds and act in the best interest of Idahoans.”

OPINIONS OF ATTORNEY GENERAL

Dedicated Funds.

The dedicated fund divisions of the department of labor and industrial services [now department of finance] are required to go through the budgeting and appropriation procedures of §§ 67-3501 — 67-3531 before expending the dedicated funds. OAG 85-7.

§ 67-3508. Expenditure object codes. — (1) Excepting where the legislature expressly departs from the classification set forth in any appropriation bill, all appropriations made by the legislature, and all estimates hereafter made for budget purposes, and all expenditures made from appropriations or funds received from other sources, shall be classified and standardized by items as follows:

(a) Personnel costs, which shall include the salaries or wage expenses of employees and officers, whether full-time, part-time, or other irregular or seasonal help and including compensation or honorarium of members of boards or commissions, and shall also include the employer's share of contributions related to other benefits provided to those employees and officers.

(b) Operating expenditures, which shall include all expenses for services, travel, consumable supplies, and minor items of equipment not otherwise classified under personnel costs, capital outlay, or trustee and benefit payments.

(c) Capital outlay, which, when used in an appropriation act, shall include all expenditures for land, highways, buildings including appurtenances, fixtures and fixed equipment, structures, which also includes additions, replacements, major repairs, and renovations to, which materially extends the capital assets' useful life or materially improves or increases its capacity, and shall include compensation for independent contractors. Automobiles, domestic animals, machinery, apparatus, equipment and furniture including additions thereto, that will meet the state controller's fiscal policy for inventoriable capital assets, shall also be included.

(d) Trustee and benefit payments, which shall include the cash payments of welfare or retirement benefits to individuals and payments to individuals, persons, or political entities, and not otherwise classified under personnel costs, operating expenditures or capital outlay.

(2) The state controller is hereby authorized and directed to implement such subclassifications of the standard classifications herein set forth which are necessary for preparation of the state budget, as supplied by the

administrator of the division of financial management and the legislative services office.

An annual review of the subclassifications shall be made by the administrator of the division and the legislative services office.

The state controller shall be supplied the changes desired by the administrator and the legislative services office in the subclassifications which are necessary for the preparation of the state budget or the identification and distribution of expenditures from appropriations no later than sixty (60) days prior to the beginning of any fiscal year to be effective for that fiscal year.

History.

I.C., § 67-3508, as added by 1973, ch. 301, § 2, p. 639; am. 1974, ch. 22, § 31, p. 592; am. 1980, ch. 358, § 13, p. 922; am. 1981, ch. 236, § 1, p. 475; am. 1984, ch. 1, § 4, p. 3; am. 1993, ch. 327, § 33, p. 1186; am. 1994, ch. 180, § 203, p. 420; am. 1995, ch. 153, § 7, p. 620; am. 1996, ch. 159, § 21, p. 502; am. 2020, ch. 28, § 1, p. 62.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Legislative services office, § 67-701 et seq.

State controller, § 67-1001 et seq.

Prior Laws.

Former § 67-3508, which comprised S.L. 1929, ch. 206, § 8, p. 400; I.C.A., § 65-3408; am. 1935, ch. 111, § 1, p. 260; am. 1941, ch. 4, § 1, p. 10, was repealed by S.L. 1973, ch. 301, § 1.

Amendments.

The 2020 amendment, by ch. 28, rewrote the last sentence in paragraph (1)(c), which formerly read: “Automobiles, domestic animals, machinery, apparatus, equipment and furniture including additions thereto, which will have a useful life or service substantially more than two (2) years, shall also be included.”

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 203 was effective January 2, 1995.

§ 67-3509. Time when appropriation available. — When an appropriation shall be made without restrictions as to the time of its use, it shall be available for expenditure for the purposes and to the amount therein stated, from the first day of July of the year during which such appropriation is made to and including the thirtieth day of June of the year following.

History.

1929, ch. 206, § 9, p. 400; I.C.A., § 65-3409; am. 1941, ch. 74, § 1, p. 141; am. 1970, ch. 66, § 6, p. 154.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1941, ch. 74 declared an emergency. Approved March 3, 1941.

CASE NOTES

Cited *Peck v. State*, 63 Idaho 375, 120 P.2d 820 (1941).

§ 67-3510. Expenditure object codes made to conform. — All object codes used in appropriations shall be made to conform to those set forth in section 67-3508, Idaho Code. All expenditures made from said appropriations shall be classified in conformity with the standard object codes. The state controller shall use the standard object codes in the classification of all expenditures drawn against any and all appropriations made by the Idaho legislature.

History.

1929, ch. 206, § 10, p. 400; I.C.A., § 65-3410; am. 1994, ch. 180, § 204, p. 420; am. 1995, ch. 153, § 8, p. 620.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 204 was effective January 2, 1995.

§ 67-3511. Transfer of legislative appropriations. — (1) No appropriations made by the Idaho legislature may be transferred from one object code to another except with the consent of the state board of examiners upon application duly made by the head of any department, office or institution of the state (including the elected officers in the executive department and the state board of education). No appropriation made for expenses other than personnel costs shall be expended for personnel costs of the particular department, office or institution for which it is appropriated, provided however, that employee suggestion awards made pursuant to sections 59-1603 and 67-5309D, Idaho Code, may be made from the object code in which the savings were realized.

(2) Legislative appropriations may be transferred from one program to another within an agency upon application duly made by the head of any department, office or institution of the state and approval of the application by the administrator of the division of financial management and the board of examiners provided the requested transfer is not more than ten percent (10%) cumulative change from the appropriated amount for any program affected by the transfer. Requests for transfers above ten percent (10%) cumulative change must, in addition to the above, be approved by legislative appropriation. Legislative appropriations shall not be transferred from one fund to another fund unless expressly approved by the legislature.

(3) All moneys appropriated to any agency of the state of Idaho for the purpose of capital outlay shall be used for that purpose and not for any other purpose.

(4) The joint finance-appropriations committee may limit the amount of legislative appropriations for personnel costs which can be transferred to other object codes.

History.

1929, ch. 206, § 11, p. 400; I.C.A., § 65-3411; am. 1973, ch. 302, § 2, p. 641; am. 1974, ch. 22, § 32, p. 592; am. 1980, ch. 358, § 14, p. 922; am. 1981, ch. 227, § 7, p. 450; am. 1983, ch. 84, § 2, p. 174; am. 1995, ch. 153, § 9, p. 620; am. 2006, ch. 380, § 6, p. 1175.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State board of education, § 33-101 et seq.

State board of examiners, § 67-2001 et seq.

Amendments.

The 2006 amendment, by ch. 380, at the end of subsection (1), added the proviso; and added subsection (4).

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Approval.

This section in providing authority for the transfer of appropriations from one program to another within a budgeted agency, such as the department of health and welfare, requires the approval of the application for transfer by the administrator of the division of the board of financial management and the board of examiners; since such approval is a discretionary act, mandamus is not available to require them to approve a transfer. *George ex rel. George v. Donovan*, 114 Idaho 388, 757 P.2d 651 (1987).

§ 67-3512. Reduction of legislative appropriations. — Any legislative appropriation made for any department, office or institution of the state may be reduced in amount by the state board of examiners upon investigation and report of the administrator of the division of financial management; provided, that before such reduction is ordered the head of such department, office or institution shall be allowed a hearing before said state board of examiners and may at such hearing present such evidence as he may see fit. No reduction of legislative appropriations made to executive department agencies shall be made without hearing unless and until the head of such department, office or institution shall file his consent in writing thereto. No reduction of legislative appropriations for the elected officers in the executive department shall be made to a level which prohibits the discharge of constitutional duties. No reduction of legislative appropriations for the legislative and judicial departments shall be made without the permission in writing of the head of such department.

History.

1929, ch. 206, § 12, p. 400; I.C.A., § 65-3412; am. 1973, ch. 300, § 8, p. 633; am. 1974, ch. 22, § 33, p. 592; am. 1980, ch. 358, § 15, p. 922; am. 1981, ch. 227, § 8, p. 450; am. 1995, ch. 153, § 10, p. 620.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State board of examiners, § 67-2001 et seq.

§ 67-3512A. Temporary reduction of spending authority. — Whenever the governor as chief budget officer of the state may determine that the expenditures authorized by the legislature for the current fiscal year shall exceed anticipated moneys available to meet those expenditures, the governor by executive order may reduce the spending authority on file in the office of the state controller for any department, office or institution of the state; provided, that no reduction of spending authority for the elected officers in the executive department shall be made to a level which prohibits the discharge of constitutional duties and provided that no reduction of spending authority for the legislative and judicial departments shall be made without the permission in writing of the head of such department. The head of any executive department, office or institution of the state may appeal the temporary reduction of spending authority to the state board of examiners, and the state board of examiners may, after hearing and consideration of evidence, restore said spending authority to its original level or to such lesser level as may be required to assist the state in maintaining a balanced budget. The governor may not temporarily reduce spending authority to a level lower than that required to insure that state expenditures do not exceed revenues. A temporary reduction of spending authority pursuant to this section shall not result in a reduction of appropriation. The governor at any time by executive order may restore spending authority which has been temporarily reduced to its original level.

History.

I.C., § 67-3512A, as added by 1981, ch. 227, § 9, p. 450; am. 1994, ch. 180, § 205, p. 420; am. 1995, ch. 153, § 11, p. 620.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 205 was effective January 2, 1995.

CASE NOTES

Cited *George ex rel. George v. Donovan*, 114 Idaho 388, 757 P.2d 651 (1987).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state constitutional and statutory balanced budget provisions. 82 A.L.R.6th 497.

§ 67-3513. Committees of legislature to consider budget. — (1) The standing committees of the house of representatives and of the senate in charge of appropriation measures shall sit jointly in open sessions while considering the budget. Such committee may resolve itself into executive session upon the vote of two-thirds (2/3) of the membership of the committee, at which time persons who are not members of the legislature may be excluded; provided, however, that during such executive session, no votes or any official action may be taken. The administrator of the division of financial management or his designated representative shall attend all meetings of the joint committee and shall present to the committee the recommendations of the governor for amounts to be appropriated for each department, office and institution, including the elective officers and the state board of education, such presentation to include all information necessary to substantiate the recommendations of the governor. The joint committee at its discretion may cause the attendance of heads or responsible representatives of said departments, offices and institutions. The joint committee may increase or decrease items in the budget as it may deem to be in the interests of greater economy and efficiency in the public service.

(2) By not later than January 15 of each year, the administrator of the division of financial management shall report to the joint committee the following minimal information: (a) A list by department, by program, and by funding source of all permanent positions authorized as of January 1 of that year and the current salary established for each position as of January 1 of that year; the list shall also designate which of the listed positions were vacant as of January 1, and the date such position became vacant.

(b) A list by department, by program, and by funding source of the amounts needed to fund the state employee compensation changes being recommended by the governor, which list must be prepared to show the individual cost of each component of the compensation changes.

(c) A report that compiles and summarizes the information the division of financial management received in accordance with sections 67-1917 and 67-3502(5), Idaho Code.

History.

1929, ch. 206, § 13, p. 400; I.C.A., § 65-3413; am. 1967, ch. 424, § 3, p. 1238; am. 1971, ch. 285, § 1, p. 1099; am. 1973, ch. 300, § 9, p. 633; am. 1974, ch. 22, § 34, p. 592; am. 1980, ch. 358, § 16, p. 922; am. 1981, ch. 227, § 10, p. 450; am. 2015, ch. 307, § 6, p. 1209.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State board of education, § 33-101 et seq.

Amendments.

The 2015 amendment, by ch. 307, added paragraph (2)(c).

Legislative Intent.

Section 1 of S.L. 2015, ch. 307 provided: “Legislative Intent. It is the intent of the Legislature that federal funds being awarded to or administered by state agencies now constitute a significant portion of state expenditures. To have the Legislature ignore these funds would greatly undermine the authority of the Legislature to appropriate moneys. It is imperative that members of the Legislature, Executive Branch and the general public be able to see all the details of federal funds received by the state so that they can prepare for a possible reduction in federal funds, measure the impact of the programs supported with federal funds and act in the best interest of Idahoans.”

Effective Dates.

Section 2 of S.L. 1971, ch. 285 declared an emergency. Approved March 30, 1971.

Idaho Code § 67-3513A

§ 67-3513A. Fiscal notes. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-3513A, as added by 1971, ch. 248, § 1, p. 1003, was repealed by S.L. 1972, ch. 3, § 1.

§ 67-3514. Appropriation bills to be prepared by joint finance-appropriations committee. — The joint committees of the legislature in charge of appropriation measures, after considering the budget requests required by section 67-3502, Idaho Code, and the executive budget as required by section 67-3506, Idaho Code, shall prepare and introduce appropriation bills covering the requirements of the various departments, offices and institutions of the state. In the case of any department, office or institution operating under a continuous appropriation, the joint committee may prepare and introduce appropriation bills covering the requirements for the administrative functions of such department, office or institution. The joint committee may, after examining the budget of any department, office or institution operating in part or in whole under a continuing appropriation or fund authorized by the legislature, prepare and introduce appropriation bills covering all the requirements of the respective department, office and institution.

History.

1929, ch. 206, § 14, p. 400; I.C.A., § 65-3414; am. 1933, ch. 136, § 2, p. 212; am. 1939, ch. 237, § 2, p. 558; am. 1970, ch. 66, § 7, p. 154; am. 1995, ch. 153, § 12, p. 620; am. 1999, ch. 37, § 4, p. 74.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1933, ch. 136 declared an emergency. Approved March 8, 1933.

Section 3 of S.L. 1939, ch. 237 declared an emergency. Approved March 11, 1939.

OPINIONS OF ATTORNEY GENERAL

Dedicated Funds.

The dedicated fund divisions of the department of labor and industrial services [now department of finance] are required to go through the

budgeting and appropriation procedures of §§ 67-3501 — 67-3531 before expending the dedicated funds. OAG 85-7.

§ 67-3515. Precedence of budget bills. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1929, ch. 206, § 15, p. 400; I. C. A., § 65-3415, was repealed by S.L. 1981, ch. 107, § 1 which became law without the governor's signature and was received by the governor March 18, 1981.

§ 67-3516. Appropriation acts deemed fixed budgets — Rate of expenditure. — (1) Appropriation acts when passed by the legislature of the state of Idaho, and spending authority made thereunder, whether the appropriation is fixed or continuing, are fixed budgets beyond which state officers, departments, bureaus and institutions may not expend.

(2) Funds available to any agency from sources other than state funds, if not cognizable at the time when appropriations were made whether state fiscal liability is increased or not, must have prior approval of the administrator of the division of financial management and the board of examiners in order that funds may be expended, except those funds received under such conditions that preclude approval by the administrator of the division and/or the board of examiners. Receipts from the sale of capital outlay items and insurance claim settlements may, with the approval of the division of financial management, be included as an increase to an agency's appropriation and must be identified at an object code level. Expenditure of such receipts must be for capital outlay items, except in the case of a sale of a motor vehicle, which, notwithstanding [section 67-3511\(3\), Idaho Code](#), may be transferred to operating expenditures with the approval of the division of financial management.

(3) One state agency may bill another state agency for goods and services, provided the billing agency receives prior approval in writing from the billed agency or such billing is provided for by law. This process will be known as interagency billing to which the following rules will apply:

(a) The state controller will treat interagency receipts as revenue and not classify such revenue as a reduction of the expenditures of the receiving agency. Interagency billing credits for all funds shall be deposited to the appropriate fund of that agency.

(b) Interagency receipts may be expended by the collecting agency to the extent that authority to do so has been requested and approved by the legislature through an appropriation.

(c) The agency which is billed for the goods and services shall classify, treat and account for such expenses in the same manner as if such

expenses had been paid by warrant and may encumber unexpended balances to liquidate known or anticipated interagency billing expenses at the end of a fiscal year. The state controller shall provide for the method of liquidation of these encumbrances.

(4) State agencies selling goods, products, and services to another state agency must use the interagency process detailed by subsection (3) of this section. State agencies, departments and institutions may sell goods, products, and services to the public and/or other political entities. These cash receipts may be expended according to the following rules:

- (a) The state controller will classify these moneys as receipts.
- (b) Receipts for all funds shall be deposited to the appropriate fund of that agency.
- (c) The collecting agency may expend all such receipts only to the extent that authority to do so has been requested and approved by the legislature through an appropriation, except receipts received by agencies under the circumstances cited in subsection (2) of this section.

History.

1941, ch. 75, § 1, p. 142; am. 1943, ch. 101, § 1, p. 195; am. 1970, ch. 66, § 8, p. 154; am. 1971, ch. 274, § 1, p. 1087; am. 1973, ch. 302, § 3, p. 641; am. 1974, ch. 22, § 35, p. 592; am. 1977, ch. 99, § 1, p. 207; am. 1980, ch. 358, § 17, p. 922; am. 1980, ch. 360, § 1, p. 936; am. 1983, ch. 84, § 1, p. 174; 1994, ch. 180, § 206, p. 420; am. 1995, ch. 153, § 13, p. 620; am. 2020, ch. 92, § 1, p. 243.

STATUTORY NOTES

Cross References.

Expenditure object codes, § 67-3508.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

Division of financial management, § 67-1910.

Amendments.

The 2020 amendment, by ch. 92, added “except in the case of a sale of a motor vehicle, which, notwithstanding [section 67-3511\(3\), Idaho Code](#), may be transferred to operating expenditures with the approval of the division of financial management” at the end of subsection (2).

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 206 was effective January 2, 1995.

OPINIONS OF ATTORNEY GENERAL

Dedicated Funds.

The dedicated fund divisions of the department of labor and industrial services [now department of finance] are required to go through the budgeting and appropriation procedures of §§ 67-3501 — 67-3531 before expending the dedicated funds. OAG 85-7.

Interagency Accounts.

The permanent building fund advisory council may pay other agencies for services pursuant to interaccount agreements. Agencies utilizing state operating or dedicated accounts could expend the funds for salaries to the extent permitted by their appropriations. Payments from the permanent building fund to trust accounts or agency asset accounts could be expended in the same manner as other receipts to those accounts. OAG 89-2.

The permanent building fund advisory council may agree to pay other agencies for services rendered in connection with a permanent building fund project. The collecting agency may expend those receipts in the current fiscal year if authorized by its own appropriation or if it is operating with a trust or agency asset account which does not require prior legislative authorization for expenditures from the account. However, the joint finance

appropriations committee should be consulted concerning the policy to be established regarding payments to other agencies for services rendered by their employees. OAG 89-2.

§ 67-3517. Requests for spending authority by officials, departments, bureaus and institutions. — In order to guard against excessive expenditure of appropriations, and as an act of economy, efficiency and control relating to said appropriations, it is hereby made the duty of each officer, department, bureau and institution, except the legislative and judicial departments, to file with the administrator of the division of financial management, who shall forward to the state controller, a request for spending authority of funds to be made available during the fiscal year, from the legislative appropriation to said officer, department, bureau or institution. Requests for spending authority shall be submitted to the administrator of the division at a time as prescribed by the administrator of the division, and as a general rule, in the same detail as appropriated, unless greater detail is deemed necessary by the administrator of the division. The legislative and judicial departments shall file a request for spending authority of funds with the state controller not later than fifteen (15) days prior to the expiration of the current spending authority, in such detail as the submitting agency desires. It shall be the duty of the state controller to provide a monthly report in the same or greater detail as the request for spending authority, which includes any adjustments made during the course of the fiscal year, expenditures for the month and expenditures to date for the year, and the percent of unexpended balance in the adjusted spending authority, and the percent of unexpended balance in the adjusted appropriation, if any.

History.

1941, ch. 75, § 2, p. 142; am. 1970, ch. 66, § 9, p. 154; am. 1971, ch. 274, § 2, p. 1087; am. 1973, ch. 302, § 4, p. 641; am. 1974, ch. 22, § 36, p. 592; am. 1980, ch. 358, § 18, p. 922; am. 1981, ch. 227, § 11, p. 450; am. 1984, ch. 137, § 1, p. 326; am. 1994, ch. 180, § 207, p. 420; am. 1995, ch. 153, § 14, p. 620.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State controller, § 67-1001 et seq.

Effective Dates.

Section 5 of S.L. 1973, ch. 302 provided the act should take effect on and after July 1, 1973.

Section 2 of S.L. 1984, ch. 137 declared an emergency. Approved March 31, 1984.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 207 was effective January 2, 1995.

§ 67-3518. Investigation of requests by administrator. — It is the duty of the administrator of the division of financial management to investigate such requests, to act upon said requests, make the necessary additions or reductions based upon necessary requirements within the amount appropriated, and deliver the same, to the state controller not later than fifteen (15) days prior to the expiration of the current spending authority.

History.

1941, ch. 75, § 3, p. 142; am. 1973, ch. 300, § 10, p. 633; am. 1974, ch. 22, § 37, p. 592; am. 1980, ch. 358, § 19, p. 922; am. 1994, ch. 180, § 208, p. 420; am. 1995, ch. 153, § 15, p. 620.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 208 was effective January 2, 1995.

§ 67-3519. Employee positions — Procedure for filling. — (1) In addition to any powers, duties, functions and responsibilities of the division of financial management expressed elsewhere in this code, the division shall establish a list of employee positions for which funds are available from the spending authority of appropriated funds to each appointing authority. A position is defined as a specific job normally held by one (1) employee. This list shall contain the title of each position and the pay grade of the position. No appointing authority, except those in the legislative and judicial departments, shall fill a new position without first obtaining the approval of the division and then obtaining proper classification from the personnel commission for positions in the classified service. No appointing authority, except those in the legislative and judicial departments, may increase the pay grade of a position by reclassification or any other means without the approval of the personnel commission for pay grade level and without the approval of the division for sufficiency of spending authority of the appointing authority to meet the proposed change. Appointing authorities in preparation of budget requests shall include exact position control numbers in justification of salaries and other compensation and must assign position control numbers to proposed new positions prior to budget submission. A list of additions, deletions and changes during the first six (6) months of the current fiscal year and projections for the second six (6) months of the current fiscal year of the positions so controlled shall be furnished by the department to the legislature and to the governor on January 1. Any authority vested in any appointing authority or agency, commission, department, board, office or institution is limited by the provisions of this section.

(2) Positions which have been authorized by the division of financial management, but which have not been filled by the appointing authority within twelve (12) months of such authorization, shall be declared null and void, and shall not be filled except upon a new authorization by the division of financial management.

History.

I.C., § 67-3519, as added by 1974, ch. 22, § 38, p. 592; am. 1981, ch. 227, § 12, p. 450; am. 1992, ch. 274, § 1, p. 847; am. 1995, ch. 153, § 16, p. 620.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Personnel commission, § 67-5307.

Prior Laws.

Former § 67-3519, which comprised S.L. 1941, ch. 75, § 4, p. 142, was repealed by S.L. 1973, ch. 300, § 11.

§ 67-3520. Economic recovery reserve fund. [Repealed.]

Repealed by S.L. 2020, ch. 112, § 2, effective July 1, 2020.

History.

I.C., § 67-3520, as added by 2003, ch. 362, § 5, p. 965.

STATUTORY NOTES

Prior Laws.

Former § 67-3520, which comprised 1941, ch. 75, § 5, p. 142; am. 1973, ch. 300, § 12, p. 633; am. 1974, ch. 22, § 39, p. 592; am. 1980, ch. 358, § 20, p. 922; am. 1981, ch. 227, § 13, p. 450; am. 1994, ch. 180, § 209, p. 420, was repealed by S.L. 1995, ch. 153, § 1, effective July 1, 1995.

Compiler's Notes.

Sections 3 and 4 of S.L. 2020, ch. 112 provided: “Section 3. Transfer of Funds from the Economic Recovery Reserve Fund. Notwithstanding the provisions of [Section 57-814 \(2\)\(b\), Idaho Code](#), which limits the allowable balance in the Budget Stabilization Fund to ten percent (10%) of total General Fund receipts for the fiscal year just ending, and [Section 57-814 \(2\) \(c\), Idaho Code](#), which requires the State Controller to transfer excess moneys in the Budget Stabilization Fund back to the General Fund, and any other provision of law to the contrary, on June 1, 2020, or as soon thereafter as practicable, it is hereby appropriated and the State Controller shall transfer any and all remaining moneys in the Economic Recovery Reserve Fund established in [Section 67-3520, Idaho Code](#), to the Budget Stabilization Fund established in [Section 57-814, Idaho Code](#).

“Section 4. Transfer of funds from the general fund. Notwithstanding the provisions of [Section 57-814 \(2\)\(b\), Idaho Code](#), which limits the allowable balance in the Budget Stabilization Fund to ten percent (10%) of total General Fund receipts for the fiscal year just ending, and [Section 57-814 \(2\) \(c\), Idaho Code](#), which requires the State Controller to transfer excess moneys in the Budget Stabilization Fund back to the General Fund, and any other provision of law to the contrary, on June 1, 2020, or as soon thereafter

as practicable, it is hereby appropriated and the State Controller shall transfer \$20,000,000 from the General Fund to the Budget Stabilization Fund established in [Section 57-814, Idaho Code](#).”

§ 67-3521. Encumbering appropriations or excessive expenditures forbidden — Encumbrances to revert — Approval. — (1) No officer, department, bureau or institution, shall encumber any appropriations or be allowed to make any expenditures from appropriations in excess of the spending authority provided by this act.

(2) Encumbrances shall be reported as reductions against appropriations in anticipation of an object coded expenditure, shall be made only for a legally contracted obligation or for the accrued cost of a specific product or service due and payable prior to or as of the end of the current fiscal year or for the term of the contract obligation, and shall not be used as a means of reserving a portion of the appropriation of one (1) fiscal year to be used in combination with the appropriation of the following year. Requests for encumbrances shall be accompanied by proper identification of the accrued cost which must be adequately covered by appropriated funds from the current fiscal year.

(3) Encumbrances not liquidated by payment of the accrued cost during the succeeding fiscal year shall revert to the fund from which encumbered, unless approved for extension by the administrator of the division of financial management.

(4) Requests for encumbrances must have the approval of the administrator of the division of financial management.

(5) Notwithstanding any of the above, all purchase orders issued by the state purchasing agent [administrator of division of purchasing], or purchase orders issued pursuant to a delegation of purchasing authority to specified state officers and employees, shall be encumbered, and such encumbrance shall not require the approval of the administrator of the division of financial management.

(6) When purchase requisitions are submitted by agencies prior to the state purchasing agent's [administrator of division of purchasing's] fiscal year-end cutoff date, but not processed either due to workload or bid requirements, agencies may submit a request for encumbrance to the administrator of the division of financial management.

(7) The provisions of this section shall not apply to encumbrances involving vocational educational or professional-technical reimbursements to educational institutions or to encumbrances involving contracts for the construction of highways, bridges, buildings or other primary structures or capital improvements.

History.

1941, ch. 75, § 6, p. 142; am. 1972, ch. 261, § 1, p. 653; am. 1977, ch. 242, § 1, p. 719; am. 1980, ch. 358, § 21, p. 922; am. 1981, ch. 95, § 1, p. 134; am. 1995, ch. 153, § 17, p. 620; am. 1999, ch. 329, § 26, p. 852.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Compiler's Notes.

The term "this act" at the end of subsection (1) refers to S.L. 1941, Chapter 75, which is codified as §§ 65-3516 to 65-3518 and 65-3521.

The bracketed insertions in subsections (5) and (6) were added by the compiler to reflect the deletion of the position of state purchasing agent by S.L. 1974, Chapter 34, § 1. See now § 67-9204.

Effective Dates.

Section 2 of S.L. 1972, ch. 261 declared an emergency. Approved March 23, 1972.

Section 2 of S.L. 1981, ch. 95 declared an emergency. Approved March 23, 1981.

**§ 67-3522. Supplemental requests for increases in allotments.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1941, ch. 75, § 7, p. 142; am. 1943, ch. 101, § 2, p. 195; am. 1970, ch. 66, § 10, p. 154, was repealed by S.L. 1995, ch. 153, § 1, effective July 1, 1995.

Idaho Code § 67-3523

**§ 67-3523. Submission of requests for allotments directed.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section which comprised S.L. 1941, ch. 75, § 8, p. 142 was repealed by 1973, ch. 300, § 13.

**§ 67-3524. Equitable distribution of government overhead expense.
[Repealed.]**

Repealed by S.L. 2020, ch. 30, § 1, effective July 1, 2020.

History.

1943, ch. 133, § 1, p. 269; am. 1955, ch. 166, § 1, p. 336; am. 1992, ch. 124, § 1, p. 406; am. 1994, ch. 180, § 210, p. 420.

§ 67-3525. Determination of expense attributable to special funds quarterly — Transfer of sums from special funds to general fund. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1943, ch. 133, § 2, p. 269; am. 1955, ch. 166§ 2, p. 336; am. 1970, ch. 66, § 11, p. 154, was repealed by S.L. 1992, ch. 124, § 2.

§ 67-3526. Disagreement on amounts allowed. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1943, ch. 133, § 3, p. 269, was repealed by S.L. 1955, ch. 166, § 3.

§ 67-3527. Certification. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1943, ch. 133, § 4, p. 269, was repealed by S.L. 1955, ch. 166, § 4.

§ 67-3528. Transfer. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1943, ch. 133, § 5, p. 269, was repealed by S.L. 1955, ch. 166, § 5.

§ 67-3529, 67-3530. Prohibited transfers — Adjustment — Certain funds excluded — Certain funds excluded from application. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised 1943, ch. 133, §§ 6, 7, p. 269, were repealed by S.L. 1992, ch. 124, § 2.

§ 67-3531. Annual statewide indirect cost allocation plan. — (1) The division of financial management shall develop an annual statewide indirect cost allocation plan in accordance with 2 CFR 225 et seq. The central service costs of the various central service agencies shall be allocated annually to the recipient state agencies, and such central service costs shall be included in an agency's indirect cost plans for the purpose of determining an indirect cost rate with the cognizant federal agency, and shall be included in an agency's federal grant application.

(2) In conjunction with the respective state service agency, the division of financial management shall prepare an estimate of costs for state budgeting purposes for services provided by the attorney general, the state treasurer and the state controller. The division of financial management shall notify all state agencies of these cost estimates for the next fiscal year on or before November 1. The division of financial management and the legislative services office shall allow state agencies to modify their budget requests in response to such estimates.

(3) The division of financial management shall assess each recipient agency up to one hundred percent (100%) of the amounts allocated in the statewide cost allocation plan. Amounts so assessed shall be separately accounted for and can be expended only after legislative appropriation.

History.

I.C., § 67-3531, as added by 1982, ch. 222, § 1, p. 597; am. 1995, ch. 153, § 18, p. 620; am. 2001, ch. 61, § 8, p. 112; am. 2015, ch. 244, § 54, p. 1008.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Division of financial management, § 67-1910.

Legislative services office, § 67-701 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-3531, which comprised [I.C., § 67-3531](#), as added by 1955, ch. 232, § 5, p. 506, was repealed by S.L. 1963, ch. 225, § 1.

Amendments.

The 2015 amendment, by ch. 244, substituted “[2 CFR 225 et seq.](#)” for “circular A-87 of the federal office of management and budget” at the end of the first sentence in subsection (1).

Federal References.

Part 225 of Title 2 of CFR, referred to in subsection (1), was removed from CFR in 2013. For present provisions relating to indirect cost allocation plans, see [2 CFR 200](#) and the appendices thereto.

§ 67-3532. Technology infrastructure stabilization fund. — (1) There is hereby created in the state treasury the technology infrastructure stabilization fund. The fund shall consist of moneys that may be provided by legislative appropriation. The state treasurer shall invest the idle moneys of the fund, and the interest earned on such investments shall be retained by the fund.

(2) Subject to appropriation by the legislature, moneys in the technology infrastructure stabilization fund shall be used solely for: (a) Technology projects requested, recommended, or funded through the annual state budget process pursuant to this chapter including, but not limited to, software development and computer hardware or equipment; and (b) The legislative services office to evaluate and provide analysis and recommendations regarding the requirements, merit, necessity, cost, compatibility, and monitoring of technology projects that may be requested, recommended, or funded through the annual state budget process pursuant to this chapter, as well as other state technology projects, needs, or issues.

History.

I.C., § 67-3532, as added by 2018, ch. 58, § 1, p. 145.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-3532, Funds appropriated to be used for declared purpose — Penalty, which comprised S.L. 1953, ch. 8, § 1, p. 9 was repealed by 1973, ch. 300, § 14.

Chapter 36

STANDARD APPROPRIATIONS ACT OF 1945

Sec.

67-3601. Application of act.

67-3602. Payment of salaries and wages.

67-3603. Manner of payment of sums appropriated.

67-3604. Closing accounts by state controller.

67-3605. Appropriated funds available only as allotted.

67-3606. Compensation of state officials, deputies and employees.
[Repealed.]

67-3607. Moneys accruing to interest funds.

67-3608. Moneys received by state educational institutions deposited with
state treasurer — Exceptions.

67-3609. Moneys from outside sources used in addition to direct
appropriation.

67-3610. University of Idaho — Annual audited financial statement.

67-3611. Expenditure of funds from sale of services, rentals or sale of
products by state institutions.

67-3612. Exemptions.

67-3613. Limitation on amount of allotments. [Repealed.]

67-3614. Title of act.

§ 67-3601. Application of act. — This act shall apply to all existing continuing appropriations, all legislative appropriations made by the twenty-eighth legislature and thereafter, unless express exception is contained in the appropriation act.

History.

1945, ch. 48, § 1, p. 61.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1945, Chapter 48, which is compiled as §§ 67-3601 to 67-3605, 67-3607 to 67-3612, and 67-3614.

CASE NOTES

Attorney fees.

State insurance fund.

Attorney Fees.

Attorney performing legal services for the fund was not an employee of the state within the meaning of the standard appropriations act. His relationship to the fund was that of attorney and client on a fee basis, which made him an independent contractor. Such fees were not a part of the overhead administrative expenses of the fund and hence were not payable out of the appropriation made for the payment of such expenses. *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

State Insurance Fund.

The state insurance fund, not being state money, and claims against it, not being claims against the state, the state board of examiners has no power or jurisdiction over the expenditure or disbursements thereof, except such as is given to it by the legislature. *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

§ 67-3602. Payment of salaries and wages. — No portion of any appropriation made for expenses other than salaries and wages shall be expended in payment of salaries and wages; but with the consent of the state board of examiners, any portion of any appropriation made for the payment of salaries and wages may be expended for other expenses of the particular office or institution for which it is appropriated.

History.

1945, ch. 48, § 2, p. 61.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

§ 67-3603. Manner of payment of sums appropriated. — All sums appropriated by any appropriation act shall, unless otherwise expressly provided by law, be paid out of the state treasury on warrants drawn by the state controller against the proper fund upon presentation of proper vouchers or claims approved as provided by law.

History.

1945, ch. 48, § 3, p. 61; am. 1994, ch. 180, § 211, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 211 was effective January 2, 1995.

§ 67-3604. Closing accounts by state controller. — The state controller shall close his accounts as to all appropriations on the day following the close of each fiscal year, and transfer all balances unencumbered at the close of business on the preceding day to the accounts from which such appropriations are severally made. Error corrections resulting from a fiscal year's activities may be recorded without legislative authorization in the following fiscal year, provided the corrections do not exceed five hundred thousand dollars (\$500,000) and are recorded within six (6) months of the end of the fiscal year. Corrections exceeding five hundred thousand dollars (\$500,000) or discovered more than six (6) months after the end of the fiscal year shall be approved by the legislature.

History.

1945, ch. 48, § 4, p. 61; am. 1970, ch. 65, § 1, p. 153; am. 1977, ch. 99, § 3, p. 207; am. 1994, ch. 180, § 212, p. 420; am. 2001, ch. 60, § 1, p. 111.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 212 was effective January 2, 1995.

OPINIONS OF ATTORNEY GENERAL

Account Corrections.

Since appropriations are made on a fiscal year basis, it is not a violation of Idaho [Const., Art. VII, § 13](#), to make necessary corrections in accounts within a fiscal year. By making corrections within a fiscal year, each account merely receives the correct amount of revenue for the fiscal year and the correct amount of revenue is available for the legislative appropriations made from each account; however, the result is not the same for corrections beyond a fiscal year as the state is prohibited from refunding to a county the state's share of a court-ordered refund of taxes collected wrongfully in prior years without a legislative appropriation. OAG 90-1.

§ 67-3605. Appropriated funds available only as allotted. — Appropriated funds shall be available only as allotted in conformity with the provisions of Chapter 75, 1941 Session Laws as amended [§§ 67-3516 to 67-3518, 67-3521].

History.

1945, ch. 48, § 5, p. 61.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion at the end of this section was added by the compiler to show where the extant provisions of the cited session law are presently codified.

**§ 67-3606. Compensation of state officials, deputies and employees.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1945, ch. 48, § 6, p. 61, was repealed by S.L. 1969, ch. 176, § 10.

§ 67-3607. Moneys accruing to interest funds. — The moneys accrued to interest funds arising from endowment and land grants are hereby perpetually appropriated therefor, and shall not be placed in the general fund of the state of Idaho, nor confused therewith, but shall remain inviolable in the respective interest funds, for the sole use of the designated beneficiary thereof.

History.

1945, ch. 48, § 7, p. 61.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

§ 67-3608. Moneys received by state educational institutions deposited with state treasurer — Exceptions. — Except as otherwise expressly provided by law, all sums of money received by any state educational institution, which belong to the state of Idaho, or received by any agent, employee or representative thereof, for services, fees or net deposits, or for any other purposes whatever, except income pledges under chapter 37, title 33, Idaho Code, and excepting income pledges under any other law or laws of the state of Idaho now in force or hereafter enacted and in force, and excepting moneys received from the United States pursuant to appropriations made by it for the maintenance, use and support of any of the educational institutions referred to herein, or for cooperative work with the United States, or for payments in reimbursement of money expended in such cooperative work, shall be immediately paid by the person receiving the same to the bursar of such educational institution, who shall deposit the same with the state treasurer at the time and in the manner required by law. Trust moneys shall not be construed to be moneys belonging to the state of Idaho. It is hereby made the duty of the state controller and state treasurer to enter the deposits so received in the general fund of the state of Idaho, and the state controller shall add the deposits so received to the appropriation currently available to the said institution; and all such sums of money so received and added are hereby appropriated from the general fund of the state of Idaho for the maintenance, use and support of such institution, and the moneys shall be expended for the use and support of such institution and shall be audited and accounted for as other appropriations to the said institution.

History.

1945, ch. 48, § 8, p. 61; am. 1994, ch. 180, § 213, p. 420.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Office of bursar, § 33-3712.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term "herein" near the middle of the first sentence refers to S.L. 1945, Chapter 48, which is codified as §§ 67-3601 to 67-3605, 67-3607 to 67-3612, and 67-3614.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 213 was effective January 2, 1995.

CASE NOTES

Purpose of state insurance money.

State insurance money.

Purpose of State Insurance Money.

The state insurance fund is an agency of the state created for the purpose of carrying on and effectuating a proprietary function as distinguished from governmental function. It serves a public purpose, but not a governmental purpose. *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

State Insurance Money.

The money in the state insurance fund does not belong to the state and is not in the state treasury within the meaning of Idaho *Const.*, Art. VII, § 13. It is deposited with the state treasurer as custodian and is held by him as such for the contributing employers and the beneficiaries of the compensation law and for the payment of the costs of the operation of the fund. *State ex rel. Williams v. Musgrave*, 84 Idaho 77, 370 P.2d 778 (1962).

§ 67-3609. Moneys from outside sources used in addition to direct appropriation. — Moneys from outside sources except those mentioned in section 67-3608[, Idaho Code,] above, as “received from the United States pursuant to appropriations made by it for the maintenance, use and support of any of the educational institutions referred to herein, or for cooperative work with the United States, or for payments in reimbursement of money expended in such cooperative work,” are hereby declared to be available for the use for which such money is received for such institution or work, and if received under such terms as to require appropriation, are hereby appropriated to such use, to be used in addition to the direct appropriations made to such institution and the appropriations of other income herein made.

History.

1945, ch. 48, § 9, p. 61.

STATUTORY NOTES

Compiler’s Notes.

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

§ 67-3610. University of Idaho — Annual audited financial statement. — As a condition to availability of appropriations made to it, and to institutions and activities under its control or supervision, the state board of education and board of regents of the University of Idaho shall file with the state controller on or before a date mutually agreed upon by the state controller and the state board of education and board of regents of the university of Idaho, an audited financial statement showing receipt of moneys from state and federal appropriations, endowment funds, local and institutional incomes, or from any other source, made to it and to institutions and activities under its control or supervision.

History.

1945, ch. 48, § 10, p. 61; am. 1994, ch. 180, § 214, p. 420; am. 2003, ch. 32, § 44, p. 115.

STATUTORY NOTES

Cross References.

State board of education and board of regents of the University of Idaho, § 33-2802.

State controller, § 67-1001 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 214 was effective January 2, 1995.

§ 67-3611. Expenditure of funds from sale of services, rentals or sale of products by state institutions. — All state institutions, educational, charitable, penal and otherwise, shall be allowed to expend the funds arising from the sale of services, rentals of personal property, stock, farm or garden produce, or other goods, or articles produced within or by the institution, for the maintenance, use and support of said institution, without reducing the amount of the appropriations made to such institutions; all such sums received shall be deposited with the state treasurer and it is hereby made the duty of the state controller and the state treasurer to enter deposits so received in the general fund of the state, and the state controller shall add the deposits so received to the appropriations made to such institutions severally; and the sums of money so received are hereby appropriated from the general fund of the state of Idaho for the maintenance, use and support of the institution by which the same are so received; and the said moneys shall be expended for the use and support of such institution for which the same were deposited, and shall be audited and accounted for as other appropriations to the said institution are.

History.

1945, ch. 48, § 11, p. 61; am. 1994, ch. 180, § 215, p. 420.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 215 was effective January 2, 1995.

§ 67-3612. Exemptions. — This act shall not apply to emergency and contingent appropriations, nor to appropriations the normal operation of which requires a total or lump sum disbursement.

History.

1945, ch. 48, § 12, p. 61.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1945, Chapter 48, which is compiled as §§ 67-3601 to 67-3605, 67-3607 to 67-3612, and 67-3614.

§ 67-3613. Limitation on amount of allotments. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section which comprised **I.C., § 67-3613**, as added by 1945, ch. 48, § 13, p. 61; am. 1971, ch. 274, § 4, p. 1087; am. 1970, ch. 65, § 2, p. 153, was repealed by S.L. 1999, ch. 37, § 5, p. 74, effective July 1, 1999.

§ 67-3614. Title of act. — This act shall be known and may be cited and made applicable by its name of “The Standard Appropriations Act of 1945.”

History.

1945, ch. 48, § 14, p. 61.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1945, Chapter 48, which is compiled as §§ 67-3601 to 67-3605, 67-3607 to 67-3612, and 67-3614.

Effective Dates.

Section 15 of S.L. 1945, ch. 48 declared an emergency. Approved February 20, 1945.

Chapter 37
STATE REFUNDING BONDS

Sec.

67-3701 — 67-3705. [Repealed.]

§ 67-3701. Issuance and sale authorized. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1925, ch. 22, § 1, p. 32; I.C.A., § 65-3501, was repealed by S.L. 2007, ch. 285, § 1. For present comparable provisions, see § 57-501 et seq.

§ 67-3702. Signing and authentication of bonds. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1925, ch. 22, § 2, p. 32; I.C.A., § 65-3502, was repealed by S.L. 2007, ch. 285, § 1. For present comparable provisions, see § 57-501 et seq.

§ 67-3703. Signature of treasurer to bond and coupons. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1925, ch. 22, § 3, p. 32; I.C.A., § 65-3503, was repealed by S.L. 2007, ch. 285, § 1. For present comparable provisions, see § 57-501 et seq.

**§ 67-3704. Annual levy for payment of interest and principal.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1925, ch. 22, § 5, p. 32; I.C.A., § 65-3504, was repealed by S.L. 2007, ch. 285, § 1. For present comparable provisions, see § 57-501 et seq.

§ 67-3705. Terms of sale. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1925, ch. 22, § 6, p. 32; I.C.A., § 65-3505, was repealed by S.L. 2007, ch. 285, § 1. For present comparable provisions, see 57-501 et seq.

Chapter 38

REPLACEMENT BONDS

Sec.

67-3801 — 67-3804. [Repealed.]

**§ 67-3801. Issuance upon cancellation of outstanding bonds.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1923, ch. 86, § 1, p. 98; I.C.A., § 65-3601; am. 1994, ch. 180, § 216, p. 420; am. 2002, ch. 32, § 25, p. 46, was repealed by S.L. 2007, ch. 285, § 2.

§ 67-3802. Unauthorized issuance unlawful. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1923, ch. 86, § 2, p. 98; I.C.A., § 65-3602, was repealed by S.L. 2007, ch. 285, § 2.

§ 67-3803. Failure to cancel exchanged bonds unlawful. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1923, ch. 86, § 3, p. 98; I.C.A., § 65-3603, was repealed by S.L. 2007, ch. 285, § 2.

§ 67-3804. Violation a felony. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1923, ch. 86, § 4, p. 98; I.C.A., § 65-3604, was repealed by S.L. 2007, ch. 285, § 2.

Chapter 39
FINANCIAL RELIEF OF TAXING DISTRICTS UNDER
FEDERAL BANKRUPTCY STATUTE

Sec.

67-3901. “Taxing district” defined.

67-3902. Exercise of powers.

67-3903. Petition by district.

67-3904. Resolution authorizing filing.

67-3905. Plan of readjustment authorized.

67-3906. Prerequisite to decree.

67-3907. Powers of district to consummate plan of readjustment.

67-3908. Validation.

67-3909. Effect and application.

67-3910. Separability.

§ 67-3901. “Taxing district” defined. — For the purpose of this act a “taxing district” is hereby defined to be a “taxing district” as described in chapter IX of an act of Congress entitled “An act to establish a uniform system of bankruptcy throughout the United States,” approved July 1, 1898, as amended. Said act of Congress and acts amendatory and supplementary thereto, as the same may be amended from time to time, are herein referred to as the “Federal Bankruptcy Statute.”

History.

1939, ch. 110, § 1, p. 184.

STATUTORY NOTES

Federal References.

The federal bankruptcy statute has been recodified and is presently compiled as title 11 of the United States Code. “Taxing district” is no longer a defined term in the bankruptcy statute.

Compiler’s Notes.

The term “this act” refers to S.L. 1939, Chapter 110, which is compiled as §§ 67-3901 to 67-3910.

CASE NOTES

Composition of indebtedness equitable.

County.

Composition of Indebtedness Equitable.

A plan for composition of drainage districts’ indebtedness, by Reconstruction Finance Corporation loan, secured by refunding bonds, and payment of 75 cents on the dollar, was held to be equitable, for the best interests of all creditors, and entitled to confirmation. In re Drainage **Dist. No. 2**, 28 F. Supp. 84 (D. Idaho 1939).

County.

A county in Idaho Is a “taxing district” within the meaning of this section and § 67-3903 and, thus, is authorized to be a debtor in a Chapter 9 bankruptcy under 11 U.S.C.S. § 109. *In re Boise County*, 465 B.R. 156 (Bankr. D. Idaho 2011).

§ 67-3902. Exercise of powers. — All powers herein granted to taxing districts may be exercised by such districts, or, in the event that such districts have no officers of their own, such powers may be exercised by the officers who have the power to contract on behalf of such districts, or to levy special assessments or special taxes within such districts.

History.

1939, ch. 110, § 2, p. 184.

STATUTORY NOTES

Compiler's Notes.

The term “herein” near the beginning of this section refers to S.L. 1919, Chapter 110, codified as §§ 67-3901 to 67-3910.

§ 67-3903. Petition by district. — Any taxing district in the state of Idaho is hereby authorized to file the petition mentioned in the Federal Bankruptcy Statute, and to incur and pay the expenses thereof and any and all other expenses necessary or incidental to the consummation of the plan of readjustment contemplated in such petition or as the same may be modified from time to time.

History.

1939, ch. 110, § 3, p. 184.

STATUTORY NOTES

Federal References.

The federal bankruptcy statute has been recodified and is presently compiled as title 11 of the United States Code.

CASE NOTES

County.

A county in Idaho Is a “taxing district” within the meaning of § 67-3901 and this section and, thus, is authorized to be a debtor in a Chapter 9 bankruptcy under 11 U.S.C.S. § 109. *In re Boise County*, 465 B.R. 156 (Bankr. D. Idaho 2011).

§ 67-3904. Resolution authorizing filing. — Before the filing of any petition referred to in section 67-3903[, Idaho Code,] hereof, such taxing district shall adopt a resolution authorizing the filing thereof and authorizing its duly and regularly elected or appointed attorney or special counsel duly appointed for such purpose, to file the same and to represent it in the proceedings with respect thereto in the competent United States district court.

History.

1939, ch. 110, § 4, p. 184.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the beginning of the section was added by the compiler to conform to the statutory citation style.

§ 67-3905. Plan of readjustment authorized. — Any taxing district is hereby authorized and empowered to take any and all action necessary to carry out any plan of readjustment contemplated in said petition, or as the same may be modified from time to time, subject only to the provisions of the constitution of the state of Idaho, notwithstanding any other provisions of law.

History.

1939, ch. 110, § 5, p. 184.

§ 67-3906. Prerequisite to decree. — No final decree or order of the United States district court confirming a plan of readjustment shall be effective for the purpose of binding the taxing district unless and until such taxing district files with the court a certified copy of a resolution of such taxing district, adopted by it or by the officials referred to in section 67-3902[, Idaho Code,] hereof, consenting to the plan of readjustment set forth or referred to in such final decree or order.

History.

1939, ch. 110, § 6, p. 184.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the end of the section was added by the compiler to conform to the statutory citation style.

§ 67-3907. Powers of district to consummate plan of readjustment. —

Upon the filing of such certified copy of such resolution, any taxing district shall have power to consummate the plan of readjustment including the following powers:

a. Cancellation and Remission. To cancel in whole or in part or remit or reduce, the moneys payable under any bonds, warrants or evidence of indebtedness or other obligations of or issued by, such taxing districts, sought to be refunded by such plan of readjustment.

b. Issuance of Refunding Bonds. To issue refunding bonds or any other evidence of indebtedness (all of which are hereinafter referred to by the term “refunding bonds”), to refund obligations specified in paragraph (5) of this subdivision, subject to the following:

(1) Nature of Refunding Bonds. Such obligations may be those of or issued by, such taxing district, as described in such plan of readjustment. Such refunding bonds shall have such denominations, rates of interest, and maturities, and shall be payable by taxes, special assessment taxes, or special assessments, assessed or levied in the manner provided in such plan of readjustment, except that no such refunding bonds shall exceed in amount, or bear a higher rate of interest than the total obligation sought to be refunded.

(2) Necessity of Elections. It shall not be necessary to hold any election to authorize the issuance of such refunding bonds unless required by existing law, in which event an election to authorize such issuance shall be held in the manner provided by law.

(3) Payment of Bonds. The refunding bonds shall be payable in the manner in which the bonds, warrants, evidence of indebtedness or other obligations sought to be refunded were payable.

(4) Requisites of Petition. It shall be sufficient for the purposes of this act that the petition shall set forth by reference or otherwise:

(a) The procedure to be followed, respectively, in the levy and collection of taxes, special assessment taxes, or special assessments for the payment of such refunding bonds.

(b) The character and effect of, and method of enforcing the liens sought to be created by the issuance of such refunding bonds.

(c) The rights of the holders of such refunding bonds upon the issuance thereof.

(5) Kinds of Bonds Authorized. The refunding bonds herein authorized shall include bonds to refund bonds secured by unpaid assessments heretofore levied upon real property in a district, and shall also include bonds to fund or refund or pay any obligation of such taxing district whether reduced to judgment or not and whether represented by any written instrument or not and whether arising by contract, statute or otherwise.

c. Adoption of Ordinances. To adopt such ordinances as are necessary to accomplish the purposes of this act or to provide due process of law with respect to any proceedings herein authorized. The officers of such taxing district, or the officers referred to in section 67-3902[, Idaho Code,] hereof, are hereby constituted a legislative body of the taxing district for such purpose.

d. Taxes and Assessments. To assess, levy and collect taxes, special assessment taxes and special assessments and to enforce the collection thereof in the manner and with the effort provided in the plan of readjustment.

e. Notice and Hearing. In the event that the plan of readjustment contemplates the issuance of refunding bonds payable by special assessment taxes, or by special assessments or reassessments, which will constitute liens upon real property, the taxing district shall not have jurisdiction to adopt the resolution mentioned in section 67-3906[, Idaho Code,] hereof unless, before the issue of the final decree or order confirming the plan of readjustment, it holds a hearing after notice thereof as herein provided. In such event before the signing of the order or decree of the Federal District Court approving the plan of readjustment, the taxing district shall cause to be given a notice, for a reasonable time and in a reasonable manner, of its intention to adopt the resolution mentioned in section 67-3906[, Idaho Code,] hereof after the issue of the final decree or order and of the fact that by the plan of readjustment it is proposed to levy special assessments or reassessments or special assessment taxes upon real

property in the amount and in the manner set forth in such plan of readjustment and of the time and place when and where all persons interested in any such assessments or reassessments or special assessment taxes will be heard by such taxing district.

f. Manner of Holding Hearing, *Etc.* The taxing district shall prescribe by ordinance or resolution the manner of holding such hearing and of giving notice thereof and the effect to be given to its determination at such hearing.

g. Reductions and Cancellations. To cancel or reduce the taxes or special assessment taxes heretofore levied or assessed by such taxing district or in its behalf upon any taxable or real property within such district, if such levy or assessment was for the purpose of paying the principal or interest on the bonds sought to be refunded by the plan of readjustment, in the manner and as set forth in such plan of readjustment, and the powers herein granted shall include cancellation or reduction of interest, penalties and costs that may be levied or assessed upon such property within such district by reason of any previous delinquency in the payment of such taxes or special assessments.

h. Enumeration Not Exclusive. The above enumeration of powers shall not be deemed to exclude powers not herein mentioned that may be necessary for or incidental to the accomplishment of the purposes hereof.

History.

1939, ch. 110, § 7, p. 184.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in paragraphs b(4) and subsection c. refers to S.L. 1939, Chapter 110, which is codified as §§ 67-3901 to 67-3910.

The bracketed insertions in subsections c. and e. were added by the compiler to conform to the statutory citation style.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-3908. Validation. — Whenever any taxing district has heretofore filed or purported or attempted to file a petition under chapter IX of the Federal Bankruptcy Statute or has taken or attempted to take any other proceedings under or in contemplation of proceedings under chapter IX of the Federal Bankruptcy Statute, all acts and proceedings of such taxing district and of the governing board or body and of public officers of such taxing district in connection with such petition or proceedings, are hereby legalized, ratified, confirmed and declared valid to all intents and purposes and the power of such taxing district to file such petition and take such other proceedings is hereby ratified, confirmed and declared, but all such proceedings taken after the date this act takes effect shall be taken in accordance with and pursuant to this act.

History.

1939, ch. 110, § 8, p. 184.

STATUTORY NOTES

Federal References.

The federal bankruptcy statute has been recodified and is presently compiled as title 11 of the United States Code.

Compiler's Notes.

The phrase “after the effective date this act takes effect” refers to after the effective date of S.L. 1939, Chapter 110, which was effective February 28, 1930.

The term “this act” at the end of the section refers to S.L. 1939, Chapter 110, which is compiled as §§ 67-3901 to 67-3910.

§ 67-3909. Effect and application. — This act shall in no wise affect any other act or acts now existing or which may hereafter be adopted covering the same subject-matter, or apply to any proceedings thereunder, but is intended to and does provide, among other matters, an alternative system for the refunding of bonds, the same to be used pursuant to the provisions of, and in conjunction with the Federal Bankruptcy Statute.

History.

1939, ch. 110, § 9, p. 184.

STATUTORY NOTES

Federal References.

The federal bankruptcy statute has been recodified and is presently compiled as title 11 of the United States Code.

Compiler's Notes.

The term “this act” at the beginning of the section refers to S.L. 1939, Chapter 110, which is compiled as §§ 67-3901 to 67-3910.

§ 67-3910. Separability. — This act and all of its provisions shall be liberally construed to the end that the purposes hereof may be made effective. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this act. The legislature hereby declares that it would have passed this act irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases thereof be declared unconstitutional.

History.

1939, ch. 110, § 10, p. 184.

STATUTORY NOTES

Compiler's Notes.

The term “this act” throughout this section refers to S.L. 1939, Chapter 110, which is compiled as §§ 67-3901 to 67-3910.

Effective Dates.

Section 11 of S.L. 1939, ch. 110 declared an emergency. Approved February 28, 1939.

Chapter 40

STATE-TRIBAL RELATIONS ACT

Sec.

67-4001. Definitions.

67-4002. Authority to enter into agreements with tribes.

67-4003. Powers of agencies not diminished.

67-4004. Council on Indian affairs created — Appointment of members.

67-4005. Organization of council.

67-4006. Governments to cooperate.

67-4007. Powers and duties of the council.

§ 67-4001. Definitions. — For the purpose of this chapter, “Indian tribe” shall mean the Coeur d’Alene Tribe, the Kootenai Tribe of Idaho, the Nez Perce Tribe, the Shoshone Bannock Tribes of the Fort Hall Reservation, or the Shoshone-Paiute Tribes of the Duck Valley Reservation.

History.

I.C., § 67-4001, as added by 1984, ch. 72, § 1, p. 133.

STATUTORY NOTES

Prior Laws.

Former § 67-4001 which comprised S.L. 1966 (E.S.), ch. 16, § 2, p. 377 was repealed by S.L. 1974, ch. 22, § 1.

Another former § 67-4001, which comprised S.L. 1919, ch. 100, § 1, p. 363; C.S., § 669; I.C.A., § 65-3701, was repealed by S.L. 1951, ch. 278, § 1, p. 599.

§ 67-4002. Authority to enter into agreements with tribes. — (1) Any public agency as defined in section 67-2327, Idaho Code, or the state of Idaho or any of its political subdivisions may enter into agreements with the Indian tribes enumerated in section 67-4001, Idaho Code, for transfer of real and personal property and for joint concurrent exercise of powers provided such agreement is in substantial compliance with the provisions of sections 67-2327 through 67-2333, Idaho Code.

(2) The governor and his designated state agencies may enter into agreements with Indian tribes enumerated in [section 67-4001, Idaho Code](#), regarding the assessment, nonassessment, collection, refund and sharing of any fuel tax imposed by the state and revenues from fuel taxes. The agreement must be in substantial compliance with the provisions of [sections 67-2327 through 67-2333, Idaho Code](#). The agreement shall be effective when ratified by both houses of the legislature by adoption of a concurrent resolution.

(3) No power, privilege or other authority shall be exercised under the authority of this chapter where otherwise prohibited by the constitution of the state of Idaho or the constitution or laws of the United States government. Additionally, the provisions of this chapter shall not be deemed to amend, modify, or repeal the provisions of chapter 51, title 67, Idaho Code (public law 280).

History.

[I.C., § 67-4002](#), as added by 1984, ch. 72, § 1, p. 133; am. 2000, ch. 414, § 1, p. 1320.

STATUTORY NOTES

Prior Laws.

Former § 67-4002, which comprised S.L. 1966 (E.S.), ch. 16, § 2, p. 377, was repealed by S.L. 1974, ch. 22, § 1.

Another former § 67-4002, which comprised S.L. 1919, ch. 100, § 2, p. 363; C.S., § 670; I.C.A., § 65-3702, was repealed by S.L. 1951, ch. 278, §

1, p. 599.

Federal References.

Public law 280, referred to at the end of the section, is August 15, 1953, **Public Law 83-280**, presently codified as **18 USCS § 1162**, **25 USCS §§ 1321 to 1325**, and **28 USCS § 1360**.

Effective Dates.

Section 2 of S.L. 2000, ch. 414 declared an emergency. Approved April 17, 2000.

OPINIONS OF ATTORNEY GENERAL

Questionable Application.

Although this section would presumably permit an agreement for affected jurisdictions to detain persons subject to tribal court arrest warrants at the request of the tribe and deliver them to tribal officers, there are some unanswered questions in using this section to support such an agreement, such as whether a tribe's grant of authority to state officers to arrest for misdemeanor tribal offenses based on a tribal court warrant would be in excess of the limitations of §§ 19-603 and 67-4003; thus, to avoid such ambiguities, new legislation with statewide application is probably the best solution. OAG 95-4.

RESEARCH REFERENCES

Idaho Law Review. — Time to Recommit: The Department of Justice's Indian Resources Section, the Trust Duty, and Affirmative Litigation, Thad Blank. 48 Idaho L. Rev. 391 (2012).

§ 67-4003. Powers of agencies not diminished. — Nothing in this chapter shall be interpreted to grant to any state or public agency thereof or Indian tribe or public agency thereof the power to increase or diminish the political or governmental power of the United States, the state of Idaho, a sister state, an Indian tribe, nor any public agency of any of them.

History.

I.C., § 67-4003, as added by 1984, ch. 72, § 1, p. 133.

STATUTORY NOTES

Prior Laws.

Former § 67-4003 which comprised S.L. 1919, ch. 100, § 3, p. 363; C.S., § 671; I.C.A., § 65-3703 was repealed by S.L. 1951, ch. 278, § 1, p. 599.

OPINIONS OF ATTORNEY GENERAL

Limitations on Power.

Although § 67-4002 would presumably permit an agreement for affected jurisdictions to detain persons subject to tribal court arrest warrants at the request of the tribe and deliver them to tribal officers, there are some unanswered questions in using § 67-4002 to support such an agreement, such as whether a tribe's grant of authority to state officers to arrest for misdemeanor tribal offenses based on a tribal court warrant would be in excess of the limitations of § 19-603 and this section; thus, to avoid such ambiguities, new legislation with statewide application is probably the best solution. OAG 95-4.

RESEARCH REFERENCES

Idaho Law Review. — Time to Recommit: The Department of Justice's Indian Resources Section, the Trust Duty, and Affirmative Litigation, Thad Blank. 48 Idaho L. Rev. 391 (2012).

§ 67-4004. Council on Indian affairs created — Appointment of members. — There is hereby created the Idaho council on Indian affairs which shall consist of ten (10) members, one (1) to be appointed by the governor, two (2) to be appointed by the president pro tempore of the senate from the members of the senate; two (2) to be appointed by the speaker of the house of representatives from the members of the house; and five (5) tribal members to be appointed by each Indian tribe with one (1) member to represent each of the various Indian tribes of the state. The five (5) Indian members shall each be members of their respective tribal councils and appointed by the tribal chairmen subject to the consent of the tribal council. A tribal member shall serve at the will of his or her tribal government until a successor is similarly selected.

History.

I.C., § 67-4004, as added by 1999, ch. 127, § 1, p. 368.

RESEARCH REFERENCES

Idaho Law Review. — Time to Recommit: The Department of Justice's Indian Resources Section, the Trust Duty, and Affirmative Litigation, Thad Blank. 48 Idaho L. Rev. 391 (2012).

§ 67-4005. Organization of council. — The council shall meet twice a year and may be called for special meetings from time to time by a majority of the council members. The council shall elect a chairperson and a vice chairperson and other officers from its members. Six (6) members constitute a quorum. The members of the council appointed by the governor shall be compensated as provided in section 59-509(h), Idaho Code. Legislative members of the council shall be compensated as provided by the citizens' committee for legislative compensation for interim legislative meetings which shall be paid from the legislative account.

History.

I.C., § 67-4005, as added by 1999, ch. 127, § 1, p. 368.

STATUTORY NOTES

Cross References.

Citizens' committee on legislative compensation, Idaho Const., Art. III, § 23 and § 64-406a.

Legislative account, § 67-451.

§ 67-4006. Governments to cooperate. — The tribal governments and the state government together with its political subdivisions shall cooperate to provide relevant information and assistance on any matters requested by the council and shall share the burden of operational expenses and staffing. Staffing and other costs incurred by the council shall be paid one-half (1/2) by the state government and one-half (1/2) by the tribal governments.

History.

I.C., § 67-4006, as added by 1999, ch. 127, § 1, p. 368.

§ 67-4007. Powers and duties of the council. — The council shall have the following powers and duties:

(1) To monitor and review legislation and state policies which impact state/tribal relations in the areas of jurisdiction, governmental sovereignty, taxation, natural resources, economic development, and other issues where state government and tribal government interface;

(2) To advise the governor, legislature, and state departments and agencies of the nature, magnitude, and priorities of issues regarding state/tribal relations;

(3) To advise the governor, legislature, and state departments and agencies on, and assist in the development and implementation of, cooperative policies, programs, and procedures focusing on the unique relationship between tribal and state government;

(4) To establish advisory committees on special subjects or projects;

(5) To cooperate and/or facilitate contracting between tribes and individuals or state, local, and other agencies, including agencies of the federal government and of other states;

(6) To make bylaws for its own governance and procedure consistent with the laws of the state and the respective tribes.

History.

I.C., § 67-4007, as added by 1999, ch. 127, § 1, p. 368.

RESEARCH REFERENCES

Idaho Law Review. — Time to Recommit: The Department of Justice's Indian Resources Section, the Trust Duty, and Affirmative Litigation, Thad Blank. 48 Idaho L. Rev. 391 (2012).

Chapter 41 STATE HISTORICAL SOCIETY

Sec.

67-4101 — 67-4110. [Repealed.]

67-4111. Declaration of policy.

67-4112. Definitions.

67-4113. Historic site designation — Public notice and comment.

67-4114. Purpose — Preservation of historical sites and monuments.

67-4115. Designation.

67-4116. Marking and maintenance.

67-4117. Approval of markers, monuments and signs.

67-4118. Penalty for damage, injury, molestation, or destruction of an archaeological or historical site, or marker.

67-4119. Purpose — Protection of archaeological and vertebrate paleontological sites and resources.

67-4120. Permits for excavation.

67-4121. Regulations — Collections held in trust.

67-4122. Penalties.

67-4123. State historical society — Governed by board of trustees.

67-4124. Board of trustees — Qualifications, appointment and terms of members.

67-4125. Board meetings — Officers — Quorum — Expenses.

67-4126. Powers and duties of board.

67-4127. Director of the society appointed by board — Powers and duties.

67-4127A. State historic preservation officer appointed by the governor.

67-4128. Title to property vested in board.

67-4129. Board empowered to acquire and dispose of property.

67-4129A. Historical society account.

67-4129B. Idaho historic preservation and cultural enhancement fund.

67-4129C. Records management services fund.

67-4130. Franklin County Pioneer Relic Hall — Recognition —
Administration — Appropriations.

67-4131. Records management services — Rules, guidelines, procedures.

§ 67-4101 — 67-4110. State historical society. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections and former §§ 67-4111 and 67-4112, which comprised S. L. 1907, p. 265, §§ 1 to 8, 10, 11; R.C., §§ 843 to 850, 852, 853; C.L., §§ 843 to 850, 852, 853; C.S., §§ 1276 to 1283, 1285, 1286, 1931, ch. 31, § 1; I.C.A., §§ 65-3801 to 65-3808, 65-3810, 65-3811; 1947, ch. 7, § 2; 1947, ch. 161, § 1, were repealed by S.L. 1970, ch. 145, § 8. For present comparable law, see §§ 67-4123 to 67-4129.

§ 67-4111. Declaration of policy. — (1) The citizens of the state of Idaho have an ongoing appreciation, pride and interest in the history of Idaho and the preservation of Idaho's historic resources. There is a need to enhance the cultural environment of the state of Idaho. Industry, commerce, agriculture and quality of life will be enhanced by the preservation of Idaho's cultural and historic resources and the connection to place.

(2) It is hereby declared to be the policy of the state of Idaho to encourage the preservation of our cultural and historic resources and to assist the society in joining with all persons and institutions concerned with the history of Idaho to ensure that cultural and historic resources are recognized and fostered and will add value to and play a significant role in the welfare and educational experience of Idaho's citizens.

History.

I.C., § 67-4111, as added by 2009, ch. 167, § 2, p. 497.

STATUTORY NOTES

Cross References.

State historical society, § 67-4123.

Prior Laws.

Former § 67-4111 was repealed. See Compiler's Notes, § 67-4101

§ 67-4112. Definitions. — As used in this chapter:

(1) “Board” means the board of trustees of the Idaho state historical society.

(2) “Historical record” means any record, artifact, object, historical or archaeological site or structure, document, evidence or public or private writing pursuant to the provisions of title 9, Idaho Code, relevant to the history of the state of Idaho.

(3) “Idaho state historical society” and “society” mean the educational institution pursuant to chapter 41, title 67, Idaho Code. The society includes the Idaho state museum, the Idaho state archives and state records center, the state historic preservation office, and operates in public trust state historic sites, including the old Idaho penitentiary, John and Ann Doney house, the Lorenzo Hill Hatch house, Franklin relic hall, Franklin cooperative mercantile institution, Rock Creek station and Stricker homesite, and Pierce courthouse.

History.

I.C., § 67-4112, as added by 2009, ch. 167, § 3, p. 497; am. 2018, ch. 137, § 1, p. 283.

STATUTORY NOTES

Prior Laws.

Former § 67-4112 was repealed. See Compiler’s Notes, § 67-4101.

Amendments.

The 2018 amendment, by ch. 137, added the second sentence in subsection (3).

Compiler’s Notes.

The 2009 amendment of § 67-4123, Idaho Code, moved governance of the state historical society from the state board of education to the department of self-governing agencies.

§ 67-4113. Historic site designation — Public notice and comment. —

No state agency or officer may recommend, designate or declare or cause any historic site to be designated as an historic site without first:

(1) Sending notification to the board of county commissioners and, if within the corporate limits of any city, to the city council where said historic site is located. Notification must include the description of the proposed site and a full and complete disclosure of the consequences of such designation under current state and federal laws;

(2) Giving at least twenty (20) days public notice of its intended action. The notice shall include a statement of the historical significance of the proposed site, the location, and the time when, the place where, and the manner in which interested persons may present their views thereon. The notice shall be mailed to all persons who have made timely requests in writing of the agency for advance notice of its intended site designation; and

(3) Affording all interested persons reasonable opportunity to submit data, views or arguments, orally or in writing. Opportunity for oral hearing must be granted, if requested in writing, no later than five (5) days before the date of the intended action by twenty-five (25) persons, by a governmental subdivision or state agency, or by an association having not less than twenty-five (25) members. All written and oral submissions respecting the proposed site designation shall be considered fully by the state agency or offices.

History.

I.C., § 67-4113, as added by 1978, ch. 187, § 1, p. 423.

STATUTORY NOTES

Prior Laws.

Former section 67-4113, which comprised S.L. 1947, ch. 161, § 2, was repealed by S.L. 1970, ch. 145, § 8.

§ 67-4114. Purpose — Preservation of historical sites and monuments. — The purpose of this act is to identify, to preserve, and to protect those sites, monuments, and points of interest within the state of Idaho which by reason of their connection with the history and development of the state merit preservation and protection, for the better appreciation of the historical heritage of this commonwealth by the people of this state and their posterity.

History.

1957, ch. 142, § 1, p. 233.

STATUTORY NOTES

Cross References.

State historical society, §§ 67-4123 to 67-4129.

Compiler's Notes.

The words “this act” refer to S.L. 1957, Chapter 142, which is compiled as §§ 67-4114 to 67-4118.

§ 67-4115. Designation. — The governor of this state is hereby authorized, in his discretion, upon the advice and recommendation of the Idaho State Historical Society, to designate, establish, and declare any historic or archaeological site, monument, or point of interest in this state as an Idaho state historic site provided however, that if the historic or archaeological site be so designated or selected is situate upon privately owned land, or upon land owned by other than the state of Idaho, the site shall not be so designated without the permission and consent of the owner thereof.

History.

1957, ch. 142, § 2, p. 233.

§ 67-4116. Marking and maintenance. — The Idaho State Historical Society shall provide signs or markers for Idaho state historic sites. Said markers, if located upon land owned by the state of Idaho, shall be maintained by the department of the state having charge of the administration of said land. If located upon private land, said markers shall be maintained by agreement or arrangement between the Idaho State Historical Society and any local historical organization where said historic site is located or, and with the consent of, the landowner.

History.

1957, ch. 142, § 3, p. 233.

§ 67-4117. Approval of markers, monuments and signs. — No marker, monument, nor sign referring to or memorializing any historic event shall be placed on or adjacent to any highway of the state of Idaho on land owned by the state of Idaho, or over which the state of Idaho has an easement, without the consent and approval of the department of the state having charge of the administration of said land, and the approval by the Idaho State Historical Society of the form and character of the marker, monument, or sign, and of the language used thereon.

History.

1957, ch. 142, § 4, p. 233.

§ 67-4118. Penalty for damage, injury, molestation, or destruction of an archaeological or historical site, or marker. — Any person who shall in any way wilfully, intentionally, or recklessly damage, molest, disturb, destroy, or harm any archaeological or any historic site, or who shall remove, destroy, obliterate, or in any way damage any sign, marker, or monument thereon or adjacent thereto, referring to any such historic site, shall be guilty of a misdemeanor and shall also be liable civilly to the state of Idaho by way of penalty in a sum equal to triple the amount of the cost and expense of repairing, replacing, and reconstructing said site or the property or markers, signs, or monuments thereon, or existing in connection therewith, to their condition prior to such damage, injury, molestation, or destruction. At each archaeological or historic site designated as herein provided, appropriate notice shall be posted of the purport of this section and of the penalties and liability prescribed.

History.

1957, ch. 142, § 5, p. 233.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

§ 67-4119. Purpose — Protection of archaeological and vertebrate paleontological sites and resources. — The purpose of this act is to protect archaeological and vertebrate paleontological sites and resources on public lands in the state of Idaho and to ensure their safety and availability for scientific research.

History.

1963, ch. 181, § 1, p. 539.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1963, Chapter 181, which is compiled as §§ 67-4119 to 67-4122.

§ 67-4120. Permits for excavation. — A permit shall first be obtained from the board of trustees of the Idaho State Historical Society before any excavation in or on any prehistoric site, ruins, pictographs, petroglyphs, or any other ancient marking or writing, or in or on any archaeological or vertebrate paleontological deposit or site on any public lands in Idaho. Such permits shall be issued only to applicants who are qualified by experience or professional training to conduct such excavations in an approved scientific manner. Said trustees may appoint any such professionally qualified advisors as, in their opinion, may be needed to advise them upon the granting of said permits.

History.

1963, ch. 181, § 2, p. 539.

§ 67-4121. Regulations — Collections held in trust. — (1) The board of trustees of the Idaho state historical society is hereby authorized and empowered to promulgate and to enforce such regulations as it may deem needful to protect the prehistoric ruins and relics and archaeological and vertebrate paleontological sites and deposits on any public land in Idaho. No person shall remove from the state of Idaho any part of any such ruins, pictographs, petroglyphs, relics, deposits, objects, specimens, or artifacts recovered from any such archaeological or vertebrate paleontological site or deposit without first obtaining the consent of the board of trustees of the Idaho state historical society. Said board of trustees may require, as a condition to such consent, that such portion of such relics, ruins, pictographs, petroglyphs, objects, specimens, artifacts, or deposits as said board of trustees shall require, shall become or remain the property of the state of Idaho. Nothing in this section shall be construed to interfere with the administrative management of relics, ruins, pictographs, petroglyphs, deposits, objects, specimens, or artifacts that have been recovered from any such sites or deposits and that are the property of any agency or institution of the government of the state of Idaho.

(2) Idaho state historical society artifacts, archival materials and historic buildings are held in trust for the people of the state of Idaho and are protected, secure, unencumbered, cared for and preserved. These collections shall not be capitalized or defined as financial assets and shall not be sold to finance debt or infrastructure.

History.

1963, ch. 181, § 3, p. 539; am. 2018, ch. 84, § 1, p. 189.

STATUTORY NOTES

Amendments.

The 2018 amendment, by ch. 84, added “Collections held in trust” at the end of the section heading; designated the existing provisions as subsection (1); and added subsection (2).

§ 67-4122. Penalties. — Any person violating this act shall be guilty of a misdemeanor and, upon conviction thereof, shall, in addition to any other penalties imposed, forfeit to the state of Idaho all articles and materials he acquired from or discovered on such archaeological or vertebrate paleontological sites.

History.

1963, ch. 181, § 4, p. 539.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes.

The term “this act” refers to S.L. 1963, Chapter 181, which is compiled as §§ 67-4119 to 67-4122.

§ 67-4123. State historical society — Governed by board of trustees.

— The Idaho state historical society, hereinafter referred to as the society, shall be governed by a board of trustees. The society and its board of trustees shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be within the department of self-governing agencies. The board shall be responsible for administering the powers and duties required to preserve and protect any historical record of the history and culture of Idaho.

History.

1970, ch. 145, § 1, p. 438; am. 1974, ch. 10, § 18, p. 49; am. 2009, ch. 167, § 4, p. 497.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

Amendments.

The 2009 amendment, by ch. 167, substituted “department of self-governing agencies” for “office of the state board of education.”

CASE NOTES

Decisions Under Prior Law Appropriations.

Appropriation for expenses other than salaries, without including any words showing an intent to extend purposes for which it was made, is limited to making provision for expenses specified in charter of society. *State ex rel. Allebaugh v. Gallet*, 36 Idaho 178, 209 P. 723 (1922).

§ 67-4124. Board of trustees — Qualifications, appointment and terms of members. — The board of trustees shall consist of seven (7) members to be appointed by the governor. The members of the board shall be chosen with due regard to their knowledge, competence, experience and interest in the fields related to the preservation and promotion of Idaho history. The governor shall consider geographic representation when selecting board members by appointing one (1) trustee from each of the seven (7) judicial districts as set forth in chapter 8, title 1, Idaho Code. All appointees shall be chosen solely on the basis of their qualifications. The board shall provide the governor with a list of nominated qualified candidates to fill any board vacancy.

All members of the board shall serve for a specific term. Upon expiration of the terms of members serving on the board on the effective date of this act, the governor shall appoint members for a term of six (6) years, except appointments for the unexpired portion of a term. No member shall serve more than two (2) consecutive full terms.

History.

1970, ch. 145, § 2, p. 438; am. 1974, ch. 10, § 19, p. 49; am. 1989, ch. 32, § 1, p. 37; am. 1999, ch. 15, § 1, p. 23; am. 2009, ch. 167, § 5, p. 497.

STATUTORY NOTES

Cross References.

Appointment of state historic preservation officer by governor, § 59-904.

Amendments.

The 2009 amendment, by ch. 167, throughout the section, substituted “governor” for “state board of education”; in the first paragraph, inserted “and promotion” in the first sentence and added the last sentence; and, in the last paragraph, twice deleted “of trustees” following “board.”

Compiler’s Notes.

The phrase “the effective date of this act” in the last paragraph refers to the effective date of S.L. 1974, Chapter 10, which was effective July 1, 1974.

§ 67-4125. Board meetings — Officers — Quorum — Expenses. —

The board shall hold such meetings as may be necessary for the orderly conduct of its business, with at least one (1) meeting in each calendar quarter, and from time to time on seventy-two (72) hours' notice of the chairman or of a majority of the members. At the first meeting of the board, and every two (2) years thereafter, the members of the board shall select a chairman and a vice chairman. Four (4) members shall be necessary to constitute a quorum at any meeting and action of the majority of members present shall be the action of the board.

The members of the board of trustees of the society shall be compensated as provided by [section 59-509\(h\), Idaho Code](#).

History.

1970, ch. 145, § 3, p. 438; am. 1980, ch. 247, § 82, p. 582; am. 1989, ch. 32, § 2, p. 37; am. 1995, ch. 187, § 1, p. 675.

§ 67-4126. Powers and duties of board. — The board of trustees of the society shall have powers and duties as follows:

1. To appoint a director of the society as provided herein and advise him in the performance of his duties and formulate general policies affecting the society.

2. To encourage and promote interest in the history of Idaho and encourage membership in the society.

3. To collect for preservation and display artifacts and information illustrative of Idaho history, culture and society.

4. To print such publications and reports as may be deemed necessary.

5. To encourage creation of county historical societies and museums in the counties of Idaho.

6. To facilitate the use of Idaho records for official reference and historical research.

7. To be responsible for records management services for state government. Records management services include the management, storage and retrieval of all state created records under retention. State created records shall mean any document, book, paper photograph, sound recording or other material, regardless of physical form or characteristic, made or received pursuant to law or in connection with the transaction of official state business. The board may charge reasonable amounts for records management services. The records managed pursuant to this subsection will not be subject to the exemption in public records law provided in [section 74-101\(15\), Idaho Code](#).

8. To accept from any state, county, or city, or any public official, any official books, records, documents, original papers, newspaper files, printed books, or portraits, not in current use. When such documents are so accepted, copies therefrom shall be made and certified under the seal of the society upon application of any person, which person shall pay for such copies reasonable fees established by the society.

9. To require that any state, county, or city, or any public official, deposit official books, records, documents, or original papers, not in current use, which are of definite historical importance, in the society for preservation and to provide methods whereby such materials, which have no significance, may be destroyed.

10. To establish such rules as may be necessary to discharge the duties of the society.

11. To employ such personnel as may be necessary for the administration of its duties in accordance with the rules of the administrator of the division of human resources promulgated pursuant to chapter 52, title 67, Idaho Code.

12. To have and use an official seal.

13. To delegate and provide subdelegation of any such authority.

14. To identify historic, architectural, archaeological, and cultural sites, buildings, or districts, and to coordinate activities of local historic preservation commissions.

15. To serve as the geographic names board of the state of Idaho.

History.

1970, ch. 145, § 4, p. 438; am. 1974, ch. 234, § 1, p. 1596; am. 1982, ch. 365, § 1, p. 915; am. 1999, ch. 370, § 20, p. 976; am. 2012, ch. 216, § 1, p. 588; am. 2015, ch. 141, § 172, p. 379.

STATUTORY NOTES

Cross References.

Administrator of division of human resources, § 67-5308.

Amendments.

The 2012 amendment, by ch. 216, added subsection 7 and renumbered the subsequent subsections accordingly.

The 2015 amendment, by ch. 141, substituted “74-101” for “9-337” in subsection (7).

§ 67-4127. Director of the society appointed by board — Powers and duties. — A director of the society shall be appointed by the board of trustees, serve at the pleasure of the board, be qualified by reason of his education, training, experience and demonstrated ability to fill such position, and exercise the following powers and duties in addition to all other powers and duties inherent in the position or delegated to him or imposed upon him by the board:

1. To be a nonvoting member of the board of trustees and secretary thereto.
2. To be the administrative officer of the state historical society.
3. To prescribe such rules as may be necessary for the efficient operation of his office.
4. To serve as state historic preservation officer if so appointed by the governor pursuant to [section 67-4127A, Idaho Code](#).

History.

1970, ch. 145, § 5, p. 438; am. 1974, ch. 234, § 2, p. 1596; am. 1996, ch. 232, § 2, p. 758.

§ 67-4127A. State historic preservation officer appointed by the governor. — The state historic preservation officer shall be appointed by the governor, serve at the pleasure of the governor and be qualified by reason of his education, training, experience and demonstrated ability to fill the position. The compensation for the state historic preservation officer shall be set by the governor. The state historic preservation officer may be the same person as the director of the state historical society or may also be an employee of the state historical society or may be an individual not employed by the state historical society.

History.

I.C., § 67-4127A, as added by 1996, ch. 232, § 3, p. 758.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 1996, ch. 232 declared an emergency. Approved March 14, 1996.

§ 67-4128. Title to property vested in board. — All rights and title to property, real and personal, belonging to the historical society of the state of Idaho are hereby vested in the board of trustees and their successors.

History.

1970, ch. 145, § 6, p. 438.

§ 67-4129. Board empowered to acquire and dispose of property. —

The board of trustees of the society is empowered to acquire, by purchase or exchange, any property which in the judgment of the board is needful for the operation of the society, and to dispose of, by sale or exchange, any property which in the judgment of the board is not needful for the operation of the same.

History.

1970, ch. 145, § 7, p. 438.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 1970, ch. 145 provided that the act should be effective January 1, 1971.

§ 67-4129A. Historical society account. — The director of the Idaho state historical society may receive, on behalf of the society, any money or real or personal property donated, bequeathed, devised, or conditionally granted to the society. “Donated,” as used in this section, shall include moneys paid by the public for admission to historical facilities operated by the society, and shall include moneys derived from retail sales related to the society’s programs.

Such moneys received directly or derived from the sale of such property shall be deposited by the state treasurer in a special account in the agency asset fund to be known as the “Historical Society Account,” which is hereby established, reserved, set aside and administered to carry out the terms or conditions of such donation, bequest, devise, or grant. Pending such expenditure or use, surplus moneys in the historical society account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by [section 67-1210, Idaho Code](#). Interest received on all such investments shall be paid into the historical society account.

The director shall provide annually, to the legislative services office, an accounting of the historical society account, setting forth the sources, applications and balance of moneys within the account.

History.

[I.C., § 67-4129A](#), as added by 1983, ch. 65, § 1, p. 148; am. 1993, ch. 327, § 34, p. 1186; am. 1996, ch. 159, § 22, p. 502.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

State treasurer, § 67-1201 et seq.

§ 67-4129B. Idaho historic preservation and cultural enhancement fund. — (1) There is hereby created in the state treasury the Idaho historic preservation and cultural enhancement fund. Moneys in the fund shall consist of grants, federal moneys, donations or funds from any other source.

(2) Moneys in the fund may be expended pursuant to appropriation to the state historical society and the fund balance may be appropriated annually to the state historical society. The state treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

(3) Moneys in the fund shall be used exclusively for the purposes of protection and preservation of the state's cultural resources, historic buildings, structures, artifacts, and records; for enhancement of statewide cultural and historic education opportunities; and for historical research purposes.

History.

I.C., § 67-4129B, as added by 2006, ch. 119, § 3, p. 334; am. 2018, ch. 169, § 21, p. 344.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Amendments.

The 2018 amendment, by ch. 169, deleted “funds received pursuant to **section 49-416D, Idaho Code**” following “shall consist of” in the second sentence of subsection (1).

Effective Dates.

Section 4 of S.L. 2006, ch. 119 provided that the act should take effect January 1, 2007.

§ 67-4129C. Records management services fund. — There is hereby created in the state treasury the “records management services fund.” Moneys in the fund shall consist of funds received from state and local governmental agencies for records management services. The Idaho state historical society shall have the authority to charge and receive payment from such agencies in accordance with rules promulgated or procedures or guidelines established by the agency. Moneys received pursuant to this section are for the operations of maintaining, storing and retrieving governmental records. The legislature shall appropriate all moneys in the records management services fund.

History.

I.C., § 67-4129C, as added by 2012, ch. 216, § 2, p. 588.

§ 67-4130. Franklin County Pioneer Relic Hall — Recognition — Administration — Appropriations. — (1) There is hereby reaffirmed the recognition accorded the Franklin County Pioneer Relic Hall pursuant to chapter 31, laws of 1935 [First Extraordinary Session], and accepted by the state of Idaho October 14, 1935 as provided therein.

(2) The Franklin County Pioneer Relic Hall shall be maintained pursuant to sections 67-4123 and 67-4128, Idaho Code, with the advice and assistance of the Idaho Pioneer Association of Franklin, Idaho.

(3) Funds for the administration and maintenance of the facility shall be appropriated upon the request of the Idaho historical society and made available to the association for such purposes.

History.

I.C., § 67-4130, as added by 1974, ch. 10, § 20, p. 49.

STATUTORY NOTES

Compiler's Notes.

For more information on the historic Franklin properties, see <https://history.idaho.gov/franklin>.

The bracketed insertion in subsection (1) was added by the compiler to clarify the session law citation.

Effective Dates.

Section 21 of S.L. 1974, ch. 10 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-4131. Records management services — Rules, guidelines, procedures. — (1) The Idaho state historical society may develop, subject to the provisions of chapter 52, title 67, Idaho Code, rules and procedures pertaining to records management services. Rules, or if rules are not adopted, guidelines and procedures shall be established:

(a) Pertaining to retention periods for all state created records; (b) Prescribing conditions and procedures for destruction of state created records; (c) Ensuring efficient utilization of manpower, building space and supplies with regard to paper flow and forms usage; (d) Pertaining to proper and efficient utilization of microfilming and imaging services; and (e) Pertaining to protocols for an electronic records management program.

(2) The Idaho state historical society shall develop and shall provide to all state agencies a records management manual containing all the rules and procedures developed for records management. Such manual may be provided to state agencies in an electronic format.

History.

I.C., § 67-4131, as added by 2012, ch. 216, § 3, p. 588.

Chapter 42

STATE PARKS

Sec.

67-4201. Withdrawal of lands for park purposes.

67-4202. Heyburn Park.

67-4203. Heyburn Park — Supervision.

67-4204. Heyburn Park — Granting of concessions.

67-4205. Heyburn Park — General laws applicable.

67-4206. Heyburn Park — Improvements — Finances.

67-4207, 67-4208. [Repealed.]

67-4209. Agreement with United States authorized to operate lands adjacent to Walcott Lake and American Falls Reservoir and Cascade Reservoir as recreational areas.

67-4210. Administration of areas by park and recreation board of the department of parks and recreation.

67-4211. Expenditure of funds by board.

67-4212. State parks and recreational trailways listed — Controlled by park and recreation board of the department of parks and recreation.

67-4213. Areas constituting state parks — Exceptions.

67-4214. Farragut State Park — Created — Location.

67-4215. Control and management.

67-4216. Alienation prohibited.

67-4217. Register Rock — Massacre Rock State Park and Historical Monument.

67-4218. Department of parks and recreation created.

67-4219. Intent of legislature.

67-4220. Interagency committee. [Repealed.]

67-4221. Park and recreation board — Members — Appointment — Terms — Honorariums and expenses — Meetings and quorums — Removal of members.

67-4222. Powers and duties of board — Appointment of director — Employees — Merit system — Salaries.

67-4223. Powers of board.

67-4223A. Idaho state parks passport program — Fee.

67-4224. Duty of board to acquire, develop, and maintain land — Transfer of jurisdiction.

67-4225. Park and recreation fund.

67-4226. Division of parks and recreation in department of land abolished — Heyburn Park appropriation transferred.

67-4227. Rights, duties and obligations transferred.

67-4228. Power of board to accept gifts.

67-4229. Idaho Veterans Memorial Park created — Location.

67-4229A. Lucky Peak State Park — Spring Shores dock acquisition.

67-4229B. Harriman state park — Financing improvements.

67-4230. Park management — Alienation of land.

67-4231. Highest use — Eminent domain.

67-4232. Recreation trails system — Definitions.

67-4233. Idaho recreation trails coordinator.

67-4234. Duties of coordinator.

67-4235. Penalty for defacing or destroying trail.

67-4236. Appropriation — Use of available moneys — Indemnification of owners of land adjacent to trails.

67-4237. Parking violations.

67-4238. Authority of director to enter into agreements.

67-4239. Enforcement authority.

67-4240. Legislative intent.

67-4241. Park land trust — Created — Acquisition of property authorized.

67-4242. Exchange or sale of property held in park land trust.

67-4243. Control, management, and administration of property held in park land trust.

67-4244. Appropriation — Use of income.

67-4245. Short title.

67-4246. Legislative intent.

67-4247. State trust fund for outdoor recreation enhancement — Creation, administration, eligible recipients.

67-4247A. State trust fund for outdoor recreation enhancement — grant evaluation committee. [Repealed.]

67-4248. Management of funded projects and lands.

67-4249. Rules.

§ 67-4201. Withdrawal of lands for park purposes. — Wherever any lands are owned by the state of Idaho, bordering on or in the vicinity of any lake, waterfall, spring or other natural curiosity, the park and recreation board of the department of parks and recreation may withdraw the premises from sale. If in the opinion of the park and recreation board it is desirable, the lands may be platted into lots and blocks, parks, streets and public places, and the lots and blocks may be appraised and an annual rental fixed thereon. No lease of the premises shall be made for a longer period than ten (10) years, and every lease shall specify that no disorderly house shall be kept on the premises; that the premises shall be kept in good condition, and that no waste shall be committed thereon. Notwithstanding the foregoing, the board may, in its discretion, extend or renew an existing lease of a float home moorage site for a period of up to thirty (30) years, on terms and conditions as the board deems appropriate. The board may require a bond against waste, and may prescribe additional rules for leasing of the premises for the use thereof and for construction of buildings or other improvements thereon, and the removal thereof.

History.

1907, p. 311, § 1; reen. R.C., § 1639; compiled and reen. C.L. 132:1; C.S., § 3086; I.C.A., § 65-3901; am. 1953, ch. 78, § 1, p. 101; am. 2014, ch. 129, § 1, p. 362.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

Amendments.

The 2014 amendment, by ch. 129, substituted “park and recreation board of the department of parks and recreation” for “state board of land commissioners”; substituted “park and recreation board” for “land board” in the second sentence; inserted the present next-to-last sentence; and deleted “and regulations” following “rules” in the last sentence.

Effective Dates.

Section 2 of S.L. 2014, ch. 129 declared an emergency. Approved March 18, 2014.

§ 67-4202. Heyburn Park. — The name of the park created out of Coeur d’Alene Indian reservation by the act of congress of April 30, 1908 (35 Statutes at Large, 78), shall be Heyburn Park, said park being described as follows, to wit:

Sections one (1), two (2) and twelve (12), township forty-six (46) north of range four (4) west, Boise meridian; sections thirty-five (35) and thirty-six (36), township forty-seven (47) north of range four (4) west, Boise meridian; all of those portions of sections two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10) and eleven (11), township forty-six (46) north of range three (3) west, Boise meridian, lying south and west of the Saint Joe river in said township; all of those portions of sections thirty-one (31) and thirty-two (32), township forty-seven (47) north of range three (3) west, Boise meridian, lying south and west of the Saint Joe river in said township.

History.

Based upon 1911, ch. 89, §§ 1, 2, p. 335; compiled and reen. C.L. 132:5; C.S., § 3090; I.C.A., § 65-3904.

STATUTORY NOTES

Compiler’s Notes.

The “Act of congress” referred to in the first paragraph, provides that certain land in the Coeur d’Alene Indian reservation “is reserved and withdrawn from allotment and settlement, and the secretary of the interior is hereby authorized to convey any part thereof to the state of Idaho to be maintained by said state as a public park, said conveyance to be made for such consideration and upon such terms and conditions as the secretary of the interior shall prescribe.”

For more information on Heyburn state park, see <https://parksandrecreation.idaho.gov/parks/heyburn>.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-4203. Heyburn Park — Supervision. — The park and recreation board of the department of parks and recreation shall have the supervision and control of Heyburn Park. Said board shall have power and it shall be its duty to make and enforce rules and regulations necessary for the use and government of said park and to determine the manner and provide the means for the enforcement of said rules and regulations.

History.

1911, ch. 89, § 3, p. 335; compiled and reen. C.L. 132:6; am. 1919, ch. 8, § 45, p. 68; C.S., § 3091; I.C.A., § 65-3905; am. 1949, ch. 136, § 1, p. 239; am. 1950 (E.S.), ch. 25, § 4, p. 39; am. 1974, ch. 8, § 1, p. 35.

STATUTORY NOTES

Compiler's Notes.

For more information on Heyburn state park, see <https://parksandrecreation.idaho.gov/parks/heyburn>.

§ 67-4204. Heyburn Park — Granting of concessions. — The park and recreation board of the department of parks and recreation is authorized to make concessions to proper and desirable parties for the establishment of not to exceed three (3) places of refreshment and entertainment within the said park; also to make concessions to parties who will provide suitable boating facilities upon the waters within said park under such restrictions as to use and compensation for use as said board may determine: provided, that no private parties shall be permitted to construct wharves within said park.

The board shall also have full authority to determine the conditions upon which leases, concessions and privileges shall be granted, subject always to the condition that the park shall be free to public use and the enjoyment of all the people without discrimination as to race, under such rules and regulations as are to be provided as aforesaid.

History.

1911, ch. 89, § 4, p. 335; reen. C.L. 132:7; am. 1919, ch. 8, § 46, p. 68; C.S., § 3092; I.C.A., § 65-3906; am. 1949, ch. 136, § 2, p. 239; am. 1974, ch. 8, § 2, p. 35.

STATUTORY NOTES

Compiler's Notes.

For more information on Heyburn state park, see <https://parksandrecreation.idaho.gov/parks/heyburn>.

CASE NOTES

Cited [Landis v. Hodgson, 109 Idaho 252, 706 P.2d 1363 \(Ct. App. 1985\)](#).

§ 67-4205. Heyburn Park — General laws applicable. — All of the laws of the state of Idaho, civil and criminal, shall be applicable to said park and enforceable within the boundaries thereof as elsewhere.

History.

1911, ch. 89, § 5, p. 336; reen. C.L. 132:8; C.S., § 3093; I.C.A., § 65-3907.

STATUTORY NOTES

Compiler's Notes.

For more information on Heyburn state park, see *<https://parksandrecreation.idaho.gov/parks/heyburn>*.

CASE NOTES

Cited *State v. Seitter*, 127 Idaho 370, 900 P.2d 1381 (Ct. App. 1994).

§ 67-4206. Heyburn Park — Improvements — Finances. — All improvements within said park and upon any additions thereto shall be made under the direction of the park and recreation board of the department of parks and recreation and all costs of such improvements, together with the expense of maintaining and governing said park shall be paid out of the appropriation made to the board for that purpose and all revenue derived from said park shall be paid into the park and recreation fund of the state of Idaho. The expense of acquiring and improvement of real estate adjacent to the said park, which is necessary to the complete enjoyment, sanitation, improvement and protection of the park, by purchase, condemnation or otherwise, shall be deemed to be incidental to the operation, administration or improvement of the said park.

History.

1911, ch. 89, § 7, p. 336; reen. C.L. 132:10; C.S., § 3095; am. 1921, ch. 112, § 44, p. 260; I.C.A., § 65-3908; am. 1937, ch. 125, § 1, p. 190; am. 1947, ch. 221, § 5, p. 532; am. 1949, ch. 136, § 3, p. 239; am. 1950 (E.S.), ch. 25, § 5, p. 39; am. 1974, ch. 8, § 3, p. 35.

STATUTORY NOTES

Cross References.

Park and recreation fund, § 67-4225.

Compiler's Notes.

For more information on Heyburn state park, see <https://parksandrecreation.idaho.gov/parks/heyburn>.

Effective Dates.

Section 9 of S.L. 1949, ch. 136 provided that the act should be effective from and after July 1, 1949.

Section 8 of S.L. 1950 (E.S.), ch. 25 provided that said act should be in full force and effect on and after July 1, 1950.

§ 67-4207. Purchase of Spalding Mission site authorized. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, comprising S.L. 1935, ch. 114, § 1, p. 275, was repealed by S.L. 1974, ch. 8, § 4, p. 35.

The park known as Spalding State Park was transferred to the United States department of interior by S.L. 1966 (2nd E.S.), ch. 19. See Compiler's Notes, § 67-4212.

§ 67-4208. Lands set aside for Spalding Park. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1935, ch. 114, § 2, p. 275; 1950 (E.S.), ch. 25, § 7, p. 39, was repealed by section 3 of S.L. 1966 (2nd E.S.), ch. 19.

The park known as Spalding State Park was transferred to the United States department of interior by S.L. 1966 (2nd E.S.), ch. 19. See Compiler's Notes, § 67-4212.

§ 67-4209. Agreement with United States authorized to operate lands adjacent to Walcott Lake and American Falls Reservoir and Cascade Reservoir as recreational areas. — The park and recreation board of the department of parks and recreation, hereinafter referred to as the board, acting for and in behalf of the people of the state of Idaho, is hereby authorized to enter into any agreement with the United States or with any of its departments, bureaus, or other agencies, which agreement shall provide for the development and administration of recreational resources or facilities located or to be located, upon lands owned by the United States and which are adjacent to, or which resources or facilities may be used in connection with the waters of, those certain bodies of water known as Walcott Lake, located in Power, Cassia, Minidoka and Blaine Counties, American Falls Reservoir, located in Power, Bingham and Bannock Counties, and Cascade Reservoir, located in Valley County. Any such agreement shall expressly recognize that the authority to be assumed by the board shall be exercised with due and proper regard for the primary purposes and uses for which such lands and waters are operated and maintained by the United States or others, and with due regard for the right of ingress and egress over said lands for watering livestock in said lake and reservoir.

History.

1951, ch. 179, § 1, p. 379; am. 1974, ch. 8, § 5, p. 35; am. 1996, ch. 351, § 1, p. 1175.

§ 67-4210. Administration of areas by park and recreation board of the department of parks and recreation. — Upon execution of any agreement specifying the area, the board shall administer such area in the manner similar to the maintenance and operation of a state park, and the board may describe such area as a state park by name. So as to obtain the fullest advantage of such area as a means of affording and providing recreation for the people of this state, the board is authorized to accept any moneys, or other things of value, from any person, association, public or private corporation, or group of persons, and to expend such moneys, or other things of value, for the development or improvement of such area, or for the construction, alteration, repair, or improvement of any structure or other facility on or upon such area and used, or to be used, for recreational purposes. The board shall have authority to prescribe rules and regulations governing the design, type, or use of any such structure or other facility and may regulate the amount to be charged for any use thereof. The board is further authorized to lease or sublease any structure or other property, including the land in or upon such area, and to prescribe or fix the charges which may be made by such lessee for the public use of the same, and to do any and all things necessary or incidental to the purposes of this act.

History.

1951, ch. 179, § 2, p. 379.

STATUTORY NOTES

Compiler's Notes.

The term “this act” at the end of this section refers to S.L. 1951, Chapter 179, which is compiled as §§ 62-4209 to 62-4211.

§ 67-4211. Expenditure of funds by board. — All moneys, or other things of value, in whatsoever manner received by the board, as provided by this act, shall be expended by it solely for the purposes of this act.

History.

1951, ch. 179, § 3, p. 379.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1951, Chapter 179, which is compiled as §§ 67-4209 to 67-4211.

§ 67-4212. State parks and recreational trailways listed — Controlled by park and recreation board of the department of parks and recreation. — The following described areas in the state of Idaho, so far as these areas are owned or controlled by the state of Idaho, and used for public, outdoor recreational purposes, are hereby declared to be Idaho state parks or recreational trailways, and they are hereby placed under the jurisdiction and control of the park and recreation board of the department of parks and recreation of the state of Idaho:

(1) Priest Lake State Park consisting of Indian Creek and Lion Head units on the east shore of Priest Lake to a depth of one thousand (1,000) feet from the shoreline in Bonner County. This park also includes Dickensheet Campground, located on Priest River downstream from Priest Lake in Bonner County.

(2) Round Lake State Park, located on the shores of Little Round Lake west of State Highway 95 in Bonner County.

(3) Farragut State Park, located near the village of Bayview, east of State Highway 95 in Kootenai County.

(4) Coeur d'Alene's Old Mission State Park, located adjacent to Interstate Highway 90 near Cataldo in Kootenai County.

(5) Mowry State Park, located on the south shore of Lake Coeur d'Alene east of U.S. Highway 95 near Worley in Kootenai County.

(6) Heyburn State Park, located on Lake Chatcolet east of U.S. Highway 95 in Benewah County.

(7) Mary Minerva McCroskey Memorial State Park, located at and near the boundary line between Latah and Benewah Counties and west of U.S. Highway 95.

(8) Dworshak State Park, consisting of the Freeman Creek and Three Meadows Group Camp areas, located on the shores of Dworshak Reservoir northeast of U.S. Highway 12, and leased from the U.S. Army Corps of Engineers.

(9) Hells Gate State Park, located on the Snake River at Lewiston, Snake River Avenue, Nez Perce County.

(10) Winchester Lake State Park, located adjacent to the city of Winchester, on Winchester Lake in Lewis County.

(11) Ponderosa State Park, constituted by all the land of the state of Idaho department of parks and recreation adjacent to Payette Lake in Valley County.

(12) Eagle Island State Park, located on Hatchery Road west of the town of Eagle in Ada County.

(13) Veterans Memorial State Park, located in the city of Boise, on State Highway 44 in Ada County.

(14) Lucky Peak State Park, constituted by all recreational areas leased to the state of Idaho on the shores of Lucky Peak Reservoir on the Boise River in Ada and Boise Counties and the Sandy Point area on the Boise River in Ada County. Discovery State Park, located approximately eight (8) miles southeast of Boise between Lucky Peak Dam and Diversion Dam on the Boise River and along State Highway 21 in Ada County.

(15) Three Island State Park, located adjacent to the City of Glenns Ferry and the Snake River, south of Interstate Highway 84 in Elmore County.

(16) Bruneau Dunes State Park, located approximately three (3) miles south of the Snake River near the town of Bruneau and east of State Highway 51 in Owyhee County.

(17) Malad Gorge State Park, located on the Malad River and south of Interstate Highway 84 in Gooding County, including the Crystal Springs, Niagara Springs, Earl M. Hardy Box Canyon Springs Nature Preserve, and Billingsley Creek state park lands located on the Snake River south of Interstate Highway 84 and east of U.S. 30 in Gooding County.

(18) City of Rocks, (one section of land within the National Reserve) located west of the Village of Almo in Cassia County.

(19) Massacre Rocks State Park, located approximately ten (10) miles west of American Falls on Interstate Highway 86 in Power County and including Register Rock.

(20) Bear Lake State Park, located on the east shoreline of Bear Lake south of U.S. Highway 30 and east of U.S. Highway 89, north of the Idaho-Utah state line in Bear Lake County. This park also includes the North Beach area.

(21) Harriman State Park, located adjacent to and east of U.S. Highway 20 in Fremont County.

(22) Henrys Lake State Park, located on the shores of Henrys Lake west of State Highway 87 in Fremont County.

(23) Lake Cascade State Park, located on the shores of Cascade Reservoir in Valley County.

(24) Lake Walcott State Park, located on the shores of Walcott Reservoir in Minidoka County.

(25) Trail of the Coeur d'Alenes Recreational Trailway, situated on the Union Pacific Railroad right-of-way running from Mullan to Harrison, Idaho.

(26) Coeur d'Alene Lake Parkway State Park, located adjacent to Coeur d'Alene Lake Drive beginning at Rutledge Trailhead and ending at Higgins Point boat launch.

(27) Glade Creek State Park, located approximately one (1) mile south of Lolo Pass along Forest Road #5670.

(28) Ashton-Tetonia Trail, situated on the Union Pacific Railroad right-of-way running from Tetonia to Ashton, Idaho.

(29) Land of the Yankee Fork State Park and historic area, situated along the Custer Motorway running from Challis to Custer, Idaho. The area includes the visitor center and museum located in Challis, the ghost towns of Custer and Bonanza, the Yankee Fork gold dredge, and cemeteries at Custer, Bonanza and Boot Hill.

(30) Castle Rocks State Park, including any department lands in Cassia County situated outside the National Reserve boundary.

History.

1957, ch. 101, § 1, p. 175; am. 1966 (2nd E.S.), ch. 19, § 2, p. 54; am. 1969, ch. 21, § 1, p. 42; am. 1972, ch. 65, § 1, p. 108; am. 1979, ch. 195, §

1, p. 564; am. 1990, ch. 359, § 1, p. 968; am. 1999, ch. 294, § 1, p. 741; am. 2003, ch. 278, § 1, p. 746; am. 2004, ch. 348, § 1, p. 1039.

STATUTORY NOTES

Cross References.

Idaho Veterans' Memorial State Park, §§ 67-4229 to 67-4231.

Compiler's Notes.

The Malad Gorge State Park, referred to in subsection (17), was combined with other state parks in 2005 and became a part of the Thousand Springs State Park. See <https://parksandrecreation.idaho.gov/parks/thousand-springs>.

The words enclosed in parentheses so appeared in the law as enacted.

Section 1 of S.L. 1966 (2nd E.S.), ch. 19 read: "Transfer of title to that real property known as Spalding State Park, located in Nez Perce County, Idaho, and that real property known as Lewis and Clark Canoe Camp Historical Site, located in Clearwater County, Idaho, from the state of Idaho to the United States of America Department of the Interior, National Park Service, for inclusion in the Nez Perce Historical National Park is hereby authorized, provided, however, that the deed given by the state to said National Park Service contain a clause whereby title to said property shall revert to the state of Idaho in the event that said property not be used for public recreation purposes."

Effective Dates.

Section 4 of S.L. 1966 (2nd E.S.), ch. 19 declared an emergency. Approved March 11, 1966.

Section 2 of S.L. 2004, ch. 348 declared an emergency. Approved March 26, 2004.

§ 67-4213. Areas constituting state parks — Exceptions. — Any and all other areas of land within the state of Idaho, except roadside picnic areas, which are donated to, and used by, the state of Idaho for public, outdoor recreational purposes, which are acquired, and used, by the state of Idaho for such purposes or which, being state property, are set aside, and used, for such purposes are hereby declared to constitute Idaho state parks and are hereby placed under the jurisdiction and control of the park and recreation board of the department of parks and recreation of the state of Idaho. Provided, however, that this section shall not be interpreted as depriving the division of highways of the state of Idaho transportation department of any existing authority granted to said division of highways by any laws of the state of Idaho.

History.

1957, ch. 101, § 2, p. 175; am. 1974, ch. 8, § 6, p. 35.

§ 67-4214. Farragut State Park — Created — Location. — There is hereby created a state park to be known and designated as Farragut State Park at Bayview, Kootenai County, Idaho, located in a portion of the area heretofore known and designated as the Farragut Wildlife Management Area, consisting of about 2,900 acres, more or less, and more particularly described as follows:

“A portion of the facility formerly known as Farragut Naval Training and Distribution Center, being a portion of fractional Sections 2, 3, 9 & 10 and 4, 5 and 8, Township 53 North, Range 2 West of the Boise Meridian, Kootenai County, state of Idaho, more particularly described as follows:

“Commencing at a point on the southerly shore of Idlewilde Bay of Lake Pend d’Oreille, said point being the meander corner common to Sections 9 and 10, Township 53 North, Range 2 West of the Boise Meridian, the real point of the beginning; thence

“South 0°03’00” East 894.96 feet along said section line to the section corner common to Sections 9, 10, 15 & 16, Township 53 North, Range 2 West of the Boise Meridian; thence along the section line between said Sections 9 & 16

“North 87°57’26” West 5426.89 feet to the section corner common to Sections 8, 9, 16 & 17, Township 53 North, Range 2 West of the Boise Meridian; thence along the section line between said Sections 8 & 17

“South 89°47’46” West 5111.50 feet to the section corner common to Sections 7, 8, 17 & 18, Township 53 North, Range 2 West of the Boise Meridian; thence along the section line between said Sections 7 & 8

“North 0°31’00” West 2650.80 feet to the 1/4 corner common to said Sections 7 & 8; thence continuing along said section line

“North 0°11’58” West 2648.75 feet to the section corner common to Sections 5, 6, 7 & 8, Township 53 North, Range 2 West of the Boise Meridian; thence

“North 82°37’38” East 1308.62 feet to a point that is 30.00 feet to the left (West) of a point on the North-South centerline of an access road, known as

“North Road”, said point being at Engineers Station: P. C. 37+82.72; thence parallel to and 30.00 feet to the left (Westerly & Northerly) of North Road centerline, the nineteen (19) following courses and distances:

“Along a curve to the right, whose Central Angle is $44^{\circ}15'$, whose Radius is 168.53 feet, whose Degree of Curve is $34^{\circ}00'$, a distance of 130.15 feet to a point; thence

“North $44^{\circ}15'$ East 2580.24 feet to a point on a curve; thence

“Along a curve to the right, whose Central Angle is $19^{\circ}16'47''$, whose Radius is 677 feet, whose Degree of Curve is $8^{\circ}27'50''$, a distance of 227.81 feet to a point; thence

“North $63^{\circ}31'46''$ East 2136.00 feet to a point on a curve; thence

“Along a curve to the left, whose Central Angle is $9^{\circ}17'46''$, whose Radius is 2865.00 feet, whose Degree of Curve is $2^{\circ}00'$, a distance of 464.83 feet to a point; thence

“North $54^{\circ}14'00''$ East 97.07 feet to a point on a curve; thence

“Along a curve to the right, whose Central Angle is $12^{\circ}02'18''$, whose Radius is 2825.00 feet, whose Degree of Curve is 2.028° , a distance of 593.56 feet to a point of Compound Curvature; thence

“Along a curve to the right, whose Central Angle is $18^{\circ}11'54''$, whose Radius is 677 feet, whose Degree of Curve is $8^{\circ}27'50''$, a distance of 215.03 feet to a point; thence

“North $85^{\circ}02'34''$ East 1648.83 feet to a point on a curve; thence

“Along a curve to the right, whose Central Angle is $23^{\circ}13'46''$, whose Radius is 2825.00 feet, whose Degree of Curve is 2.028° , a distance of 1177.11 feet to a point of Compound Curvature; thence

“Along a curve to the right, whose Central Angle is $30^{\circ}03'52''$, whose Radius is 677 feet, whose Degree of Curve is $8^{\circ}27'50''$, a distance of 355.24 feet to a point; thence

“South $41^{\circ}00'00''$ East 43.13 feet to a point on a curve; thence

“Along a curve to the left, whose Central Angle is $21^{\circ}30'$, whose Radius is 1637.14 feet, whose Degree of Curve is $3^{\circ}30'$, a distance of 614.29 feet to

a point; thence

“South $62^{\circ}30'00''$ East 198.20 feet to a point on a curve; thence

“Along a curve to the right, whose Central Angle is $23^{\circ}05'42''$, whose Radius is 955 feet, whose Degree of Curve is $6^{\circ}00'$, a distance of 384.92 feet to a point; thence

“North $68^{\circ}38'00''$ East 230.91 feet to a point on a curve; thence

“Along a curve to the right, whose Central Angle is $10^{\circ}11'20''$, whose Radius is 2292.00 feet, whose Degree of Curve is $2^{\circ}30'$, a distance of 407.56 feet to a point; thence

“North 610.99 feet to a point on a curve; thence

“Along a curve to the right, whose Central Angle is $56^{\circ}01'45''$, whose Radius is 881.50 feet, whose Degree of Curve is $6^{\circ}30'$, a distance of 862 feet to a point on said curve (said curve being a part of Blackwood Circle Road on the Northerly edge of the Hospital Area of said Farragut Naval Training and Distribution Center); thence parallel to and 18.0 feet Northerly of the centerline of said Blackwood Circle Road, the three (3) following courses and distances: continuing

“Along a curve to the right, whose Central Angle is $33^{\circ}58'15''$, whose Radius is 881.50 feet, whose Degree of Curve is $6^{\circ}30'$, a distance of 522.62 feet to a point; thence

“East 641.82 feet to a point on a curve; thence

“Along a curve to the right, whose Radius is 1910 feet, whose Degree of Curve is $3^{\circ}00'$, a distance of 35 feet, more or less, to a point that is South $62^{\circ}48'$ East 187.50 feet and South $34^{\circ}23'$ West 865 feet from the meander corner common to Section 3, Township 53 North, Range 2 West of the Boise Meridian and Section 34, Township 54 North, Range 2 West of the Boise Meridian, as described in Parcel 1 of Exceptions in that certain Deed, by and between the United States of America and the state of Idaho, recorded under Instrument No. 235294, records of Kootenai County, state of Idaho; thence

“North $34^{\circ}23'$ East 865 feet along the aforementioned course to a point on the Southwesterly shore of Squaw Bay, Lake Pend d'Oreille; thence

“Easterly, Southeasterly, Southerly, Southwesterly, Southerly, Southeasterly, and Easterly along the meandering shore line of Solitaire, or Blackwell Point, Idlewilde and Buttonhook Bays of Lake Pend d’Oreille to the point of beginning

“EXCEPTING from the above described land:

(1) “Those certain three (3) tracts of land lying Sections 2 & 3, Township 53 North, Range 2 West of the Boise Meridian, as described in Parcels 2, 3 & 7 of EXCEPTIONS under part I of that certain Deed, by and between the United States of America and the state of Idaho, recorded under Instrument No. 235294, records of Kootenai County, state of Idaho,

(2) “Those certain seven (7) tracts of land lying in Sections 2, 3 & 10, Township 53 North, Range 2 West of the Boise Meridian, as described in Parcels: 51A, 51B, 51C, 53, 54, 55 & 56 in that certain Deed, by and between the United States of America and the state of Idaho, recorded under Instrument No. 230238, records of Kootenai County, state of Idaho,

(3) “Those certain two (2) tracts of land lying in Section 9, Township 53 North, Range 2 West of the Boise Meridian, as described in the second paragraph of that certain Quitclaim Deed, by and between the United States of America and the state of Idaho, recorded under Instrument No. 229734, records of Kootenai County, state of Idaho.”

History.

1964 (E.S.), ch. 3, § 1, p. 10.

STATUTORY NOTES

Compiler’s Notes.

For more information on Farragut state park, see <https://parksandrecreation.idaho.gov/parks/farragut>.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-4215. Control and management. — The control, administration and management of the Farragut State Park shall be vested in the Girl Scout Roundup Project Coordinator, office of the governor. On and after September 1, 1965, control, administration and management of the Farragut State Park shall be vested in the park and recreation board of the department of parks and recreation of the state of Idaho.

History.

1964 (E.S.), ch. 3, § 2, p. 10; am. 1974, ch. 8, § 7, p. 35.

STATUTORY NOTES

Compiler's Notes.

For more information on Farragut state park, see <https://parksandrecreation.idaho.gov/parks/farragut>.

Effective Dates.

Section 4 of S.L. 1964 (E.S.), ch. 3 read: “This act shall be effective on the date that title to the real estate described as Farragut State Park in section 1 of this act [§ 67-4214] vests in the state of Idaho for park purposes.” The deed transferring said real estate to the state of Idaho was dated January 27, 1966.

§ 67-4216. Alienation prohibited. — The Farragut State Park shall be maintained as a state park for the use of all the people, and no part, parcel, or interest therein shall ever be permanently alienated without the express consent of the legislature.

History.

1964 (E.S.), ch. 3, § 3, p. 10.

STATUTORY NOTES

Compiler's Notes.

For more information on Farragut state park, see *<https://parksandrecreation.idaho.gov/parks/farragut>*.

Effective Dates.

Section 4 of S.L. 1964 (E.S.), ch. 3 read: “This act shall be effective on the date that title to the real estate described as Farragut State Park in section 1 [§ 67-4214] of this act vests in the state of Idaho for park purposes.” The deed transferring said real estate to the state of Idaho was dated January 27, 1966.

§ 67-4217. Register Rock — Massacre Rock State Park and Historical Monument. — In the mid-nineteenth century, the Register and Massacre Rock area of Idaho was an overnight camping area for westbound immigrants on the Oregon and California trails. The giant lava boulder, known as Register Rock, is a record of the passage of these early pioneers and the area is significant in the history and lore of Idaho, and is today, for the passing traveler, an area of scenic beauty and has been designated a state park of Idaho. To perpetuate this historical area, Register Rock and Massacre Rock State Park is hereby given the name of “Register Rock — Massacre Rock State Park and Historical Monument” which said state park shall include but not be limited to the following described real property: to-wit:

A parcel of land located in Power County, Idaho, more particularly described as That Part of the N1/2 SW1/4 and the NW1/4 SE1/4 of Sec. 12, Twp. 9 South, Range 29 East, Boise Meridian, lying North of State and Federal Highway 30 N. and Interstate Highway 15 W. containing 46 acres, more or less; Lot 1, Sec. 31, Twp. 8 South, Range 30 East, Boise Meridian, containing 63.0 acres, more or less, excepting right of way for state and federal highway purposes; with such additions or deletions therefrom as may be necessary for proper utilization of the area as a state park to be determined by the administrator thereof.

History.

1965, ch. 83, § 1, p. 137.

STATUTORY NOTES

Compiler’s Notes.

For more information on Register Rock and Massacre Rock state parks, see <https://parksandrecreation.idaho.gov/parks/massacre-rocks>.

§ 67-4218. Department of parks and recreation created. — There is hereby created a department of parks and recreation which shall be, for the purposes of section 20, article IV, of the constitution of the state of Idaho, an executive department of state government.

History.

1965, ch. 85, § 1, p. 139; am. 1972, ch. 65, § 2, p. 108; am. 1974, ch. 8, § 8, p. 35.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1994, ch. 339 declared an emergency. Approved March 31, 1994.

§ 67-4219. Intent of legislature. — It is the intent of the legislature that the department of parks and recreation shall formulate and put into execution a long range, comprehensive plan and program for the acquisition or leasing, planning, protection, operation, maintenance, development and wise use of areas of scenic beauty, recreational utility, historic, archaeological or scientific interest, to the end that the health, happiness, recreational opportunities and wholesome enjoyment of life of the people may be further encouraged. The department may fulfill this mission by operating a statewide system of parks and recreation programs or by entering into agreements with cities, counties, recreation districts or other political subdivisions or agencies of the state, the federal government, tribal governments, private landowners or nonprofit organizations, that further expand the public park and recreation opportunities available to the public. The legislature finds that the state of Idaho and its subdivisions should enjoy the benefits of federal lands and assistance programs for the planning and development of the outdoor recreational resources of the state, including the acquisition or leasing of lands and waters and interests therein in accordance with all other applicable laws, including applicable provisions of titles 42 and 43, Idaho Code. It is the purpose of this act to provide authority to enable the state of Idaho and its subdivisions to participate in the benefits of such lands and programs.

History.

1965, ch. 85, § 2, p. 139; am. 1972, ch. 65, § 3, p. 108; am. 2002, ch. 225, § 1, p. 647.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the last sentence refers to S.L. 1965, Chapter 85, which is compiled as §§ 67-4218, 67-4219, and 67-4221 to 67-4228.

CASE NOTES

Cited Campbell v. Glacier Park Co., 381 F. Supp. 1243 (D. Idaho 1974);
Idaho v. Hodel, 814 F.2d 1288 (9th Cir. 1987).

§ 67-4220. Interagency committee. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, comprising S.L. 1965, ch. 85, § 3, p. 139, was repealed by S.L. 1974, ch. 8, § 9, p. 35.

§ 67-4221. Park and recreation board — Members — Appointment — Terms — Honorariums and expenses — Meetings and quorums — Removal of members. — (a) There is hereby created a governing authority of the department to consist of a board of six (6) persons to be known as the “park and recreation board.” Each member of the board shall be appointed by the governor of the state of Idaho, with the advice and consent of the senate, to serve a term of six (6) years, except the terms of the initial appointees shall commence on the date of appointment and shall be of staggered lengths so that a term of one (1) member will expire annually. Each member of the board shall be a qualified elector of the state. One (1) member of the board shall be appointed from each of the six (6) districts hereinafter created. Not more than three (3) members of the board shall be from any one (1) political party.

(b) For the purposes of this act, the state of Idaho is divided into six (6) districts, numbered from one (1) to six (6) as follows:

District No. 1 shall consist of the counties of Boundary, Bonner, Kootenai, Benewah and Shoshone.

District No. 2 shall consist of the counties of Latah, Clearwater, Nez Perce, Lewis and Idaho.

District No. 3 shall consist of the counties of Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore and Owyhee.

District No. 4 shall consist of the counties of Camas, Blaine, Gooding, Lincoln, Jerome, Minidoka, Twin Falls and Cassia.

District No. 5 shall consist of the counties of Bingham, Power, Bannock, Caribou, Oneida, Franklin, and Bear Lake.

District No. 6 shall consist of the counties of Lemhi, Custer, Clark, Fremont, Butte, Jefferson, Madison, Teton and Bonneville.

(c) The members of the board shall be compensated as provided by [section 59-509\(h\), Idaho Code](#).

(d) Each board member shall be entitled to one (1) vote and a majority of the members of the board shall constitute a quorum. The board shall hold

regular meetings at least once each three (3) months and shall hold special meetings at such times as it deems necessary. All meetings of the board shall be open to the public. The board shall keep a record of its proceedings.

(e) A member of the board may be removed for inefficiency, neglect of duty, misconduct in office or if he is no longer a resident of the district from which he was appointed.

(f) This section shall be exempt from the provisions of [section 59-102, Idaho Code](#).

History.

1965, ch. 85, § 4, p. 139; am. 1972, ch. 65, § 4, p. 108; am. 1973, ch. 160, § 1, p. 305; am. 1978, ch. 373, § 1, p. 978; am. 1980, ch. 247, § 83, p. 582; am. 1991, ch. 156, § 1, p. 372.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in the introductory paragraph in subsection (b) refers to S.L. 1965, Chapter 85, which is compiled as §§ 67-4218, 67-4219, and 67-4221 to 67-4228.

CASE NOTES

Effect of Organic Act.

The enactment of this section and omission of any reference to § 8 of the Organic Act of the Territory of Idaho is evidence that the legislature considered said § 8 expired or repealed, as this section would have been meaningless had said § 8 still been in force. [Jordan v. Pearce, 91 Idaho 687, 429 P.2d 419 \(1967\)](#).

§ 67-4222. Powers and duties of board — Appointment of director — Employees — Merit system — Salaries. — (a) The park and recreation board shall administer, conduct and supervise the department of parks and recreation and shall have the powers and privileges of a corporation, including the right to sue and be sued in its own name.

(b) The board shall appoint a director to serve at its discretion. When appointed, the director shall be an ex officio member of the board and its secretary and administrative officer. He shall be bonded as required by the board and shall perform such duties as are in this act presented and as are delegated by the board. The director shall be selected upon the basis of executive ability, experience and training in park and recreational matters.

(c) The board shall authorize the employment of whatever staff it deems necessary for sound and economical administration of the department. The board shall adopt a merit system for all employees of the department. The director shall hire said persons who shall hold their respective positions subject to the rules of the merit system of the department. If a merit system is adopted for state employees, then the employees of the department shall be subject to the rules of such state merit system. The salaries and compensation of all persons employed by the department shall be fixed by the board and as otherwise provided by law.

History.

1965, ch. 85, § 5, p. 139; am. 1972, ch. 65, § 5, p. 108.

STATUTORY NOTES

Cross References.

Park and recreation capital improvement account, board to administer, § 57-1801.

Off-road motor vehicle account, board to administer, § 57-1901.

Compiler's Notes.

The term “this act” in the third sentence in subsection (b) refers to S.L. 1965, Chapter 85, which is compiled as §§ 67-4218, 67-4219, and 67-4221 to 67-4228.

§ 67-4223. Powers of board. — The park and recreation board shall:

(1) Adopt, amend or rescind rules as may be necessary for the proper administration of the provisions of section 67-4218, et seq., Idaho Code, and the use and protection of park and recreational areas subject to its jurisdiction. A violation of any rule promulgated by the board pursuant to this provision that concerns the use and protection of park and recreation areas is an infraction.

(2) Make expenditures for the acquisition, leasing, care, control, supervision, improvement, development, extension and maintenance of all lands under the control of the department and to make arrangements, agreements, contracts or commitments, which may or may not involve expenditures or transfer of funds, with the head of any state institution, department or agency for the improvement or development of lands or properties under the control of the board, or any other department or agency of the state of Idaho.

(3) Appoint advisory, local and regional park and recreational councils, to consider, study and advise in the work of the department for the extension, development, use and maintenance of any areas which are to be considered as future park or recreational sites or which are designated as park recreational areas.

(4) Appoint a six (6) member recreational vehicle advisory committee, who shall be compensated as provided in [section 59-509\(f\), Idaho Code](#), and act in an advisory capacity to the board on matters relating to the development and improvement of recreational vehicle related facilities and services as provided in subsection (5) of this section. Each member of the advisory committee shall be representative of recreational vehicle users with one (1) from each of the districts described in [section 67-4221, Idaho Code](#). The terms of appointment shall be three (3) years, except that the initial appointees shall commence on the date of appointment and shall be of staggered lengths so that the term of two (2) members will expire annually.

(5) Administer the funds derived from the state recreational vehicle fund established in [section 49-448, Idaho Code](#), to provide financial assistance in the form of grants to public entities for the acquisition, lease, development, improvement, operations and maintenance of facilities and services designed to promote the health, safety and enjoyment of recreational vehicle users. Up to fifteen percent (15%) of the recreational vehicle fund generated each year may be used by the department to defray recreational vehicle program administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the recreational vehicle fund.

(6) Cooperate with the United States and its agencies and local governments of the state for the purpose of acquiring, leasing, supervising, improving, developing, extending or maintaining lands which are designated as state parks, state monuments or state recreational areas and to secure agreements or contracts with the United States and its agencies or local governments of the state for the accomplishment of the purposes of section 67-4218, et seq., Idaho Code.

(7) Construct, lease or otherwise establish public park or recreational privileges, facilities and conveniences and to operate said recreational services and to make and collect reasonable charges for their use or to enter into contracts for their operation. The board may discount fees in order to offer use incentives to generate additional revenue for operation of the state park system. The net proceeds derived shall be credited to the park and recreation fund established in [section 67-4225, Idaho Code](#), and are hereby specifically appropriated to defray the cost of the public park or recreational services. The department is specifically authorized to enter into contracts with the United States and its agencies which require that the state expend any excess of revenue above expenses for improvements of the recreational or park area from which the excess was derived.

(a) The board may provide for waiver of fees to any resident of Idaho who is a disabled veteran and whose disability is rated at one hundred percent (100%) or higher, permanent and total.

(b) The board may provide for a reduction of no more than fifty percent (50%) of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any senior citizen who

possesses a valid federal “golden age passport” or other equivalent successor, as issued by a federally operated facility where an entrance fee is charged.

(c) If any state recognizes senior citizens by offering a special park pass for use in that state, the board may provide for a reduction of no more than fifty percent (50%) of the fee charged for recreational vehicle camping, effective Monday night through Thursday night, for any person who possesses such a state park pass.

(8) Prepare, maintain and keep up to date a comprehensive plan for the provision of the outdoor recreational resources of the state; to develop, operate and maintain or enter into leases or agreements with local governments for the operation and maintenance of outdoor recreational areas and facilities of the state, and to acquire lands, waters and interests in lands and waters for such areas and facilities.

(9) Apply to any appropriate agency or officer of the United States for participation by the department or a political subdivision of the state or the receipt of aid from any federal program respecting outdoor recreation. It may enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial and other records relating thereto and furnish to appropriate officials and agencies of the United States reports and information as may be reasonably necessary to enable officials and agencies to perform their duties under such programs. In connection with obtaining the benefits of any program, the park and recreation board shall coordinate its activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development and maintenance of outdoor recreational resources and facilities.

(10) Obligate the state regarding the responsible management of any federal funds transferred to it for the purpose of any federal enactment and, in accordance with the exercise of this responsibility, the state hereby consents to be sued in any United States district court for the recovery of any federal funds that the responsible federal official, department or agency finds have been misused or disposed of contrary to the agreement with the federal official, department or agency or contrary to the provisions of federal enactment or applicable federal regulations.

(11) Cooperate and contract with and receive and expend aid, donations and matching funds from the government of the United States, receive and expend funds from the STORE and to receive and expend donations from other sources to acquire, develop, operate and maintain outdoor recreational areas and facilities of the state and, when authorized or directed by any act of congress or any rule or regulation of any agency of the government of the United States, to expend funds donated or granted to the state of Idaho by the federal government for such purposes.

Provided however, the park and recreation board shall make no commitment or enter into any agreement pursuant to an exercise of authority under section 67-4218, et seq., Idaho Code, until it has determined that sufficient funds are available to it for meeting the state's share, if any, of project costs. It is legislative intent that, to the extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of section 67-4218, et seq., Idaho Code, such areas and facilities shall be publicly maintained for outdoor recreational purposes. The park and recreation board may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition and development projects involving participating federal-aid funds or state funds on behalf of any subdivision or subdivisions of this state. Provided, that the subdivision or subdivisions give necessary assurances to the park and recreation board that they have available sufficient funds to meet their shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of the subdivision or subdivisions for public outdoor recreational use.

(12) Establish, develop, supervise and maintain through cooperative agreement, lease, purchase or other arrangement the Idaho recreation trail system, with the advice of the coordinator created in [section 67-4233, Idaho Code](#), and consistent with the goals of recreation, transportation and public access to outdoor areas.

(13) Enter into agreements with cities, counties, recreation districts or other political subdivisions of the state to cost-effectively provide recreational facilities, opportunities and services to the citizens of the state.

(14) Have the authority to regulate firearm discharges in state parks for the protection of the public. However, this subsection shall not apply to or affect a person discharging a firearm in the lawful defense of person, persons or property or to a person discharging a firearm in the course of lawful hunting. The possession or carrying of firearms is otherwise regulated by chapter 33, title 18, Idaho Code.

(15) Enter into agreements with private, nonprofit public benefit corporations and other persons, corporations and entities, as may be appropriate, to assist the department in its efforts to secure long-term funding sources for the state park and recreation system to ensure state parks are preserved and open for public use and enjoyment. Such agreements may include, but shall not be limited to, memberships, corporate and individual sponsorships, the sale of advertising, and marketing agreements to fund or promote, in whole or in part, state park and recreation events, programs and facilities. The board may encourage sponsorships by providing appropriate recognition to sponsors consistent with the mission of the department of parks and recreation as set forth in [section 67-4219, Idaho Code](#). All revenue received from such agreements shall be deposited into the park and recreation fund pursuant to [section 67-4225, Idaho Code](#).

History.

1965, ch. 85, § 6, p. 139; am. 1972, ch. 65, § 6, p. 108; am. 1974, ch. 300, § 3, p. 1763; am. 1985, ch. 184, § 3, p. 470; am. 1988, ch. 253, § 5, p. 487; am. 1988, ch. 265, § 585, p. 549; am. 1993, ch. 286, § 3, p. 973; am. 1995, ch. 40, § 1, p. 59; am. 1995, ch. 332, § 2, p. 1103; am. 1998, ch. 361, § 1, p. 1131; am. 2001, ch. 43, § 1, p. 80; am. 2002, ch. 225, § 2, p. 647; am. 2005, ch. 201, § 1, p. 609; am. 2006, ch. 229, § 2, p. 683; am. 2009, ch. 58, § 1, p. 162; am. 2015, ch. 335, § 1, p. 1265.

STATUTORY NOTES

Cross References.

Punishment for infraction, § 18-113A.

State treasurer, § 67-1201 et seq.

Amendments.

This section was amended by two 1995 acts — ch. 40, § 1, effective February 28, 1995, and ch. 332, § 2, effective July 1, 1995 — which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 40, § 2, in subsection (a) in the first sentence deleted “and regulations” following “or rescind rules” and added the second sentence.

The 1995 amendment, by ch. 332, § 2, in subsection (a) in the first sentence, deleted “and regulations” following “or rescind rules”; in subsection (h) substituted “provision” for “development” following “a comprehensive plan for the”; in subsection (k) in the first paragraph added “, receive and expend funds from the STORE” preceding “and to receive and expend donations” and in the second paragraph in the third sentence added “or state funds” following “federal-aid funds”.

The 2006 amendment, by ch. 229, in subsection (d), substituted the language beginning “three (3) years, except that the initial appointees” for “concurrent with the incumbent park and recreation board member from the respective districts.”

The 2009 amendment, by ch. 58, changed the designation scheme in the section from alpha to numeric and added subsection (14).

The 2015 amendment, by ch. 335, added subsection (15).

Compiler’s Notes.

The “golden age passport” referred to in paragraph (7)(b) is no longer issued by the United States national park service. A \$80 lifetime “senior pass” is available, see <https://www.nps.gov/planyourvisit/senior-pass-changes.htm>.

The reference to “the STORE” in the first paragraph of subsection (11) is to the state trust for outdoor recreation enhancement. See § 67-4245 et seq.

Effective Dates.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

Section 4 of S.L. 1993, ch. 286 provided that the act shall be in full force and effect on January 1, 1994.

CASE NOTES

Cited *Idaho v. Hodel*, 814 F.2d 1288 (9th Cir. 1987).

OPINIONS OF ATTORNEY GENERAL

RV fund.

Board could not unilaterally allocate \$25,000 from the recreational vehicle (RV) fund, pursuant to § 49-448 and this section, for the support of gateway visitor information centers. Approval of a qualified grant application for such purposes would be within the board's discretion. In this instance, the transfer of \$25,000 from the RV fund to gateway visitor information centers was a legislative act over which the board had no discretion. OAG 96-4.

§ 67-4223A. Idaho state parks passport program — Fee. — Upon payment of the fee as provided in section 49-402(11), Idaho Code, the purchaser shall be authorized to enter all Idaho state parks without paying the motor vehicle entrance fee for either a one (1) or two (2) year period of time, dependent on the fee paid by the purchaser. The provisions of this section shall not preclude the department from continuing to sell daily and annual motor vehicle entrance passes to Idaho residents who choose not to participate in the Idaho state parks passport program and to any nonresident visiting Idaho state parks.

History.

I.C., § 67-4223A, as added by 2012, ch. 41, § 3, p. 127; am. 2013, ch. 354, § 5, p. 962; am. 2014, ch. 13, § 3, p. 18.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 354, updated the reference in the first sentence in light of the 2013 amendment of § 49-402.

The 2014 amendment, by ch. 13, updated a reference in the first sentence in light of the 2014 amendment of § 49-402.

Compiler's Notes.

S.L. 2013, Chapter 354 became law without the signature of the governor.

§ 67-4224. Duty of board to acquire, develop, and maintain land — Transfer of jurisdiction. — It shall be the duty of the board to acquire in the name of the state of Idaho by gift, devise, purchase, agreement, or otherwise, such land as in its judgment may be necessary, suitable and proper for roadside picnic, recreational or park purposes and to control, develop and maintain such land and all existing state parks, state monuments and state recreational areas heretofore established, acquired or designated to be used for such purposes, except state historical monuments. Administrative jurisdiction over all parks, park areas and recreational sites and areas, except wildlife access sites operated by the department of fish and game and roadside picnic areas under the jurisdiction of the department of highways [department of transportation] is hereby specifically transferred to the department of parks and recreation.

History.

1965, ch. 85, § 7, p. 139; am. 1972, ch. 65, § 7, p. 108.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the end of this section was added by the compiler to reflect the abolition of the department of highways and the creation of the department of transportation. See § 40-501 et seq.

§ 67-4225. Park and recreation fund. — There is hereby created in the state treasury a fund to be known as the “park and recreation fund,” which shall consist of all moneys received from the granting of concessions, the charging of rentals or other amounts received from whatever source by the state park and recreation department. The legislature shall appropriate all funds in the park and recreation fund. All moneys in the park fund, which is hereby abolished, on the effective date of this act shall be credited to the park and recreation fund.

History.

1965, ch. 85, § 8, p. 139; am. 1972, ch. 65, § 8, p. 108.

STATUTORY NOTES

Cross References.

Park and recreation capital improvement account, § 57-1801.

Off-road motor vehicle account, § 57-1901.

Compiler’s Notes.

The phrase “the effective date of this act” in the last sentence refers to the effective date of S.L. 1972, Chapter 65, which was effective July 1, 1972.

§ 67-4226. Division of parks and recreation in department of land abolished — Heyburn Park appropriation transferred. — The division of parks and recreation in the department of land is hereby abolished and any appropriations made thereto or to the board of land commissioners for administration thereof and the appropriation made to the Heyburn State Park and any residual balances in the funds of the division or of the Heyburn State Park shall be transferred and made available for expenditure by the department of parks and recreation, hereby created, in the fiscal period commencing July 1, 1965, for the purposes of this act.

History.

1965, ch. 85, § 9, p. 139; am. 1972, ch. 65, § 9, p. 108.

STATUTORY NOTES

Cross References.

Department of lands, § 58-101 et seq.

Heyburn state park, § 67-4202 et eq.

State board of land commissioners, Idaho **Const., Art. IX, § 7** and **§ 58-101 et seq.**

Compiler's Notes.

The term “this act” at the end of the section refers to S.L. 1965, Chapter 85, which is compiled as §§ 67-4218, 67-4219, and 67-4221 to 67-4228.

§ 67-4227. Rights, duties and obligations transferred. — The rights, duties and obligations of the state board of land commissioners created by chapter 5, title 58, and chapter 42, title 67, Idaho Code, relating to parks, are hereby transferred to the park and recreation board of the department of parks and recreation.

History.

1965, ch. 85, § 10, p. 139; am. 1972, ch. 65, § 10, p. 108.

§ 67-4228. Power of board to accept gifts. — The board, on behalf of the department of parks and recreation of the state of Idaho, is specifically empowered to receive any and all gifts, grants or endowments of real or personal property, or both, from any and all persons, firms, organizations, corporations, agencies of government and otherwise, on such terms and conditions as the board shall deem reasonable and acceptable.

History.

1965, ch. 85, § 11, p. 139; am. 1972, ch. 65, § 11, p. 108.

STATUTORY NOTES

Compiler's Notes.

Section 12 of S.L. 1965, ch. 85 read: “The provisions of this act shall be severable and if any phrase, clause, sentence or provision of this act is declared to be unconstitutional or the applicability thereof to any state agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to the state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed.”

Effective Dates.

Section 13 of S.L. 1965, ch. 85 provided the act should be effective July 1, 1965.

Section 12 of S.L. 1972, ch. 65 provided the act should take effect on and after July 1, 1972.

§ 67-4229. Idaho Veterans Memorial Park created — Location. —

There is hereby created a state park to be known and designated as the Idaho Veterans Memorial Park, located in Ada County and particularly described as follows:

All that lot, piece or parcel of land situate lying and being in the SE 1/4 of Section 32, T. 4 N., R. 2 E., B.M., Ada County, Idaho, bounded as follows: Beginning at a point in the Valley Road distant North 1°50' West 1,870 feet from the Section corner to Sections 32 and 33, T. 4 N., R. 2 E., and Sections 4 and 5, T. 3 N., R. 2 E., which point is a flat iron bar firmly driven in the ground and distant North from the fence of H. T. West 34 feet, said fence being on the South side of the said Valley Road. From this point said boundary line runs South 33°50' West on a center line of a row of Poplar trees 826 feet; thence South 46°35' East 14.60 feet; thence South 33°50' West 840 feet to a point on the North bank of the Boise River; thence North 46°35' West 14.60 feet along said river; thence North 57°45' West 186 feet along said river; thence North 72°55' West 260 feet along said river; thence South 89°45' West 96 feet along said river; thence South 63°27' West 154 feet along said river to a point on said Bar 10 feet distant from South Bank of Ditch, coming out of Boise River; thence North 70°36' West 288 feet along said Sand Bar; thence North 59°50' West 220 feet along said Sand Bar; thence North 43°05' East 2169 feet to a point on the Valley Road distant 32.50 feet North of said H. T. West fence and indicated by an iron pipe 1 1/2 inches in diameter driven firmly in the ground; thence South 46°55' East 756 feet to a point or place of beginning.

Except ditches, laterals, and public roads. Also excepting Boise Central Railway Co. right of way, as described in deed recorded in Book 26 of Deeds at page 139, records of Ada County, Idaho.

History.

1971, ch. 125, § 1, p. 486.

STATUTORY NOTES

Compiler's Notes.

Veterans Memorial Park was acquired by Boise Parks and Recreation in 1997 through a 25-year lease agreement between Boise City and the State of Idaho. See <https://www.cityofboise.org/departments/parks-and-recreation/parks/veterans-memorial-park>.

CASE NOTES

Constitutionality.

Session Laws 1971, ch. 125 (§§ 67-4229, 67-4230 and 67-4231), while in fact special legislation, did not come within those categories of special legislation specifically prohibited by Idaho Const., Art. III, § 19, paragraph 7. *State ex rel. Idaho State Park Bd. v. City of Boise*, 95 Idaho 380, 509 P.2d 1301 (1973).

§ 67-4229A. Lucky Peak State Park — Spring Shores dock acquisition. — Notwithstanding any law to the contrary, the board is hereby authorized to enter into a lease-purchase obligation or other financing obligation, in a principal amount not to exceed six hundred thousand dollars (\$600,000), to acquire public recreational boat dock facilities at Spring Shores on Lucky Peak Reservoir within Lucky Peak State Park, under terms, conditions and covenants as the board may approve by resolution. The public recreation enterprise account within the park and recreation fund, or so much of that fund as may be required in the judgment of the board, is hereby continuously appropriated for the acquisition. Any obligation entered into shall be payable solely from user fees for the Spring Shores boat dock facilities deposited into the public recreation enterprise account and shall not be a debt or obligation of the state. The holder or holders of the debt or obligation shall not have the right to compel any exercise of the taxing power of the state to pay the debt or obligation or the interest thereon.

History.

I.C., § 67-4229A, as added by 1996, ch. 432, § 1, p. 1466.

STATUTORY NOTES

Cross References.

Park and recreation fund, § 67-4225.

Compiler's Notes.

For more information on Lucky Peak state park, see <https://parksandrecreation.idaho.gov/parks/lucky-peak>.

Effective Dates.

Section 2 of S.L. 1996, ch. 432 declared an emergency. Approved March 28, 1996.

§ 67-4229B. Harriman state park — Financing improvements. —

Notwithstanding any law to the contrary, the board is authorized to enter into a lease-purchase obligation or other financing obligation, in a principal amount not to exceed five hundred thousand dollars (\$500,000), for the design, construction and equipping of facilities for public recreational use within Harriman state park, under terms, conditions and covenants as the board may approve by resolution. The purpose of the facilities is to provide educational and recreational opportunities for park users while generating revenue to assist with operation of the park. The park trust fund for Harriman state park, or so much of that fund as may be required in the judgment of the board, is continuously appropriated for the purpose stated in this section. Any obligation entered into shall be payable solely from user fees for the facilities within Harriman state park deposited into the park trust fund for Harriman state park and shall not be a debt or obligation of the state. The holder or holders of the debt or obligation shall not have the right to compel any exercise of the taxing power of the state to pay the debt or obligation or the interest on the debt or obligation.

History.

I.C., § 67-4229B, as added by 1998, ch. 75, § 1, p. 273.

STATUTORY NOTES

Compiler's Notes.

For more information on Harriman state park, see <https://parksandrecreation.idaho.gov/parks/harriman>.

Effective Dates.

Section 2 of S.L. 1998, ch. 75 declared an emergency and provided this act shall be in full force and effect on and after its passage and approval. Approved March 18, 1998.

§ 67-4230. Park management — Alienation of land. — From and after the effective date of this act, control, management and administration of the Idaho Veterans Memorial Park shall be vested in the Idaho park and recreation board. The Idaho Veterans Memorial Park shall be maintained as a state park for the use of all the people, and no part, parcel or interest therein shall be alienated without the consent of the legislature; provided, however, that the Idaho park and recreation board may sell, transfer or convey a right of way, easement or parcel of land on the northwest boundary of said property for use as a public highway.

History.

1971, ch. 125, § 2, p. 486; am. 1972, ch. 140, § 1, p. 307; am. 1974, ch. 8, § 10, p. 35.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

Compiler's Notes.

The phrase “the effective date of this act” refers to the effective date of S.L. 1971, Chapter 125, which was effective March 16, 1971.

Veterans Memorial Park was acquired by Boise Parks and Recreation in 1997 through a 25-year lease agreement between Boise City and the State of Idaho. see <https://www.cityofboise.org/departments/parks-and-recreation/parks/veterans-memorial-park>.

CASE NOTES

Constitutionality.

Session Laws 1971, ch. 125 (§§ 67-4229, 67-4230 and 67-4231), while in fact special legislation, did not come within those categories of special legislation specifically prohibited by Idaho **Const., Art. III, § 19**, paragraph

7. State ex rel. Idaho State Park Bd. v. City of Boise, 95 Idaho 380, 509 P.2d 1301 (1973).

§ 67-4231. Highest use — Eminent domain. — The legislature hereby declares that the highest and best use of the property described in section 67-4229, Idaho Code, is as a state park. The Idaho park and recreation board may, in its sound discretion, exercise the power of eminent domain to condemn any uses or interests in said property which are or may be inconsistent with the purposes of this act.

History.

1971, ch. 125, § 3, p. 486; am. 1974, ch. 8, § 11, p. 35.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

Compiler's Notes.

The term “this act” refers to S.L. 1971, Chapter 125, which is compiled as §§ 67-4229, 67-4230, and 67-4231.

Effective Dates.

Section 4 of S.L. 1971, ch. 125 declared an emergency. Approved March 16, 1971.

CASE NOTES

Constitutionality.

Session Laws 1971, ch. 125 (§§ 67-4229, 67-4230 and 67-4231), while in fact special legislation, did not come within those categories of special legislation specifically prohibited by Idaho Const., Art. III, § 19, paragraph 7. *State ex rel. Idaho State Park Bd. v. City of Boise*, 95 Idaho 380, 509 P.2d 1301 (1973).

§ 67-4232. Recreation trails system — Definitions. — As used in this act, the following terms have the following meanings:

- (a) “System” means the network of trails and trail segments, together with their right of ways, designated by the procedures described in this act;
- (b) “Trails” mean a corridor or route for nonmotorized travel;
- (c) “Local governments” mean counties, cities, school districts, special districts, and other municipal or political corporations of the state of Idaho;
- (d) “Department” means the Idaho state parks and recreation department; and
- (e) “Board” means the Idaho parks and recreation board [park and recreation board].

History.

I.C., § 67-4232, as added by 1974, ch. 300, § 4, p. 1763.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1974, Chapter 300, which is compiled as §§ 67-4223, 67-4230 and 67-4232 to 67-4236.

The bracketed insertion in subsection (e) was added by the compiler to correct the name of the referenced agency. See § 67-4221.

Section 1 of S.L. 1974, ch. 300, read: “This act may be cited as the ‘Idaho Recreation Trails System Act.’”

Section 2 of S.L. 1974, ch. 300, read: “In order to provide for the ever increasing outdoor recreation needs of an expanding resident and tourist population and in order to promote safe public access to travel within and enjoyment and appreciation of the open air, outdoor areas of Idaho, trails should be established both near the populated areas of this state and within, adjacent to, or connecting highly scenic areas more remotely located. The purpose of this act is to provide the means for attaining these objectives by

instituting a statewide system of recreation trails and by prescribing the methods and standards by which components may be added to the system.”

§ 67-4233. Idaho recreation trails coordinator. — The Idaho recreation trails coordinator is hereby established within the department of parks and recreation. The coordinator shall advise the board and other agencies and entities on matters relating to the system, including the designation and establishment of trails.

History.

I.C., § 67-4233, as added by 1974, ch. 300, § 5, p. 1763.

§ 67-4234. Duties of coordinator. — (1) The coordinator shall advise the board on the development of the system. Trails within the system shall be designated as one (1) or more of the following: hiking, horseback riding, bicycling, snow traveling, or other nonmotorized travel.

(2) The coordinator, in advising the board, shall be guided by the following principles: (a) emphasis shall be placed on routes located on public lands, but not to the exclusion of private lands; (b) effort shall be made to maximize the accessibility of trails to potential users; (c) there shall be utilization of public meetings to secure citizen advice; and

(d) effort shall be made to develop trails which will harmonize with other state goals, such as education and historical preservation.

(3) The coordinator shall advise the board on necessary legislation to further the development of the system.

History.

I.C., § 67-4234, as added by 1974, ch. 300, § 6, p. 1763.

§ 67-4235. Penalty for defacing or destroying trail. — Any person who defaces or destroys a trail within the system or appurtenances thereto is guilty of a misdemeanor, and shall be punished by a fine of not more than five hundred dollars (\$500), or imprisonment not exceeding six (6) months, or both.

History.

1974, ch. 300, § 7, p. 1763.

§ 67-4236. Appropriation — Use of available moneys — Indemnification of owners of land adjacent to trails. — There is hereby appropriated from the general fund to the Idaho department of parks and recreation the sum of twenty-four thousand two hundred dollars (\$24,200), or so much thereof as may be necessary, for the purpose of implementing the provisions of this act. In addition, the department may use any portion of moneys made available to it by any federal agency which may be used for such purposes, including matching funds, as the department determines are necessary or desirable to carry out the provisions of this act. The department may receive and may encourage the receipt of donated funds or property from individuals, groups, or organizations for specified or nonspecified use in connection with the acquisition, development, maintenance, and administration of trails. The department, if it considers it advisable, may provide under its rules and regulations that a portion of the donated funds received for nonspecified purposes may be used to grant to an owner of private land, adjacent to a trail, indemnification for damage clearly caused to his land, and property thereon, by users of the trail, for which the landowner has been unable to recover from the user who caused the damage.

History.

1974, ch. 300, § 8, p. 1763.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Compiler's Notes.

The term “this act” in each of the first two sentences refers to S.L. 1974, Chapter 300, which is compiled as §§ 67-4223 and 67-4232 to 67-4236.

§ 67-4237. Parking violations. — (1) If any vehicle, as defined in chapter 1, title 49, Idaho Code, is stopped, standing, or parked in an illegal or unauthorized manner within a state park and the operator cannot be identified readily, the fact that the vehicle is registered or leased in the name of a person shall be prima facie evidence that such person was in control of the vehicle at the time it was parked, unless that person can prove to the satisfaction of the court the vehicle was driven and stopped, placed or parked by an unauthorized person.

(2) The provisions of this section shall be enforced by commissioned peace officers of the Idaho state police, qualified employees of the department of parks and recreation delegated with enforcement authority by the director of the department of parks and recreation pursuant to [section 67-4239, Idaho Code](#), the sheriff and his deputies of any county in the state and any peace officer of the state of Idaho.

(3) Any violation of the provisions of this section shall be an infraction and punishable as provided in [section 18-113A, Idaho Code](#).

History.

[I.C., § 67-4237](#), as added by 1984, ch. 233, § 1, p. 562; am. 2000, ch. 469, § 136, p. 1450; am. 2006, ch. 221, § 1, p. 660.

STATUTORY NOTES

Cross References.

Idaho state police, § 67-2901 et seq.

Amendments.

The 2006 amendment, by ch. 221, in subsection (2), inserted “qualified” and substituted “delegated with enforcement authority by the director of the department of parks and recreation pursuant to [section 67-4239, Idaho Code](#)” for “authorized by the director of the Idaho state police.”

Effective Dates.

Section 2 of S.L. 1984, ch. 233 declared an emergency. Approved April 4, 1984.

§ 67-4238. Authority of director to enter into agreements. — (1) In order to further the interpretive and educational functions of recreation facilities in the state of Idaho, the director of the Idaho department of parks and recreation may on behalf of the department, enter into agreements with private nonprofit scientific, historic or educational organizations organized in whole or in part for the purpose of providing interpretive services to recreation facilities in Idaho.

(2) An organization entering into an agreement with the director under subsection (1) of this section may: (a) Provide educational or interpretive material for sale at a recreation facility;

(b) Acquire display materials and equipment for exhibits at a recreation facility;

(c) Provide support for special recreation facility interpretive programs or environmental education programs; (d) Support recreation facility libraries;

(e) Provide support for other interpretive projects related to a specific recreation facility.

(3) If the director enters into an agreement with a private organization under subsection (1) of this section, the Idaho department of parks and recreation may: (a) Provide incidental personnel services to the organization's interpretive program; and

(b) Provide space at a recreation facility for the interpretive materials provided by the organization.

(4) Any money received from the sale of publications or other materials provided by an organization pursuant to an agreement entered into under this section shall be retained by the organization for use in the interpretive or educational services of the recreation facility for which the organization provides interpretive services.

(5) As used in this section, "recreation facility" includes, but is not limited to, state parks and all recreational, historical and scenic attractions

owned or under the control of the state of Idaho and administered by the Idaho department of parks and recreation.

(6) The Idaho department of parks and recreation board shall adopt rules and regulations necessary to carry out the purpose of this section. The rules shall include but need not be limited to: (a) Procedures and forms to be used by an organization desiring to enter into an agreement with the director under this section.

(b) Guidelines for approving the interpretive material an organization proposes to provide to a recreation facility; and (c) Provisions for renewing or dissolving an agreement between an organization and the director.

History.

I.C., § 67-4238, as added by 1987, ch. 160, § 1, p. 315.

§ 67-4239. Enforcement authority. — (1) The director of the department of parks and recreation may issue Idaho uniform citations, as provided for by the rules of the court for the magistrates division of the district court and the district court, to violators of title 67, chapters 42 (state parks), 70 (safe boating act), 71 (recreational activities) and 75 (marine sewage disposal act), Idaho Code, and rules adopted under those chapters, within properties owned or managed by the department. The director may delegate this authority to qualified employees of the department.

(2) The department of parks and recreation shall develop, with the guidance and approval of the peace officers standards and training academy [peace officer standards and training council], an appropriate training course for employees applicable to issuing citations as authorized and delegated in this section. The director shall ensure, before delegating authority under this section, that employees successfully complete the training course.

History.

I.C., § 67-4239, as added by 2000, ch. 357, § 1, p. 1192; am. 2003, ch. 128, § 1, p. 378.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in subsection (2) was added by the compiler to correct the name of the referenced agency. See § 19-5101 et seq.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2000, ch. 357, declared an emergency. Approved April 14, 2000.

§ 67-4240. Legislative intent. — The legislature finds that in order to obtain the maximum long-term benefits to the people of Idaho, it is necessary for lands of outstanding park and recreation potential to be acquired and incorporated into the state park system in the most economical manner possible.

The legislature further recognizes that the land assets of the department must be reviewed from time to time to determine whether such assets are most suitable for achieving the department's objectives. If such assets are unsatisfactory for the purpose of providing outstanding park and recreation opportunities or because of geographic location or other factors are inefficient to manage, then such assets should be replaced by other, more suitable assets so that the full potential of the state park system shall be realized.

The purpose of this chapter is to provide a means to facilitate the disposition, by the parks and recreation board [park and recreation board], of unsuitable park and recreation lands, and the acquisition of lands to improve the overall park and recreation opportunities offered by the state park system.

History.

I.C., § 67-4240, as added by 1989, ch. 386, § 1, p. 961.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the last paragraph was added by the compiler to correct the name of the referenced agency. See § 67-4221.

§ 67-4241. Park land trust — Created — Acquisition of property authorized. — The parks and recreation board [park and recreation board] may, by gift, purchase, agreement, device, donation, or otherwise, acquire property to be held by the department in a park land trust. The department may place any lands under its jurisdiction, where not prevented by deed or other restriction, in the park land trust.

History.

I.C., § 67-4241, as added by 1989, ch. 386, § 2, p. 961.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the first sentence was added by the compiler to correct the name of the referenced agency. See § 67-4221.

§ 67-4242. Exchange or sale of property held in park land trust. —
The parks and recreation board [park and recreation board] may:

(1) Exchange property held in the park land trust for any lands of equal value which it administers, provided such exchange is not prohibited by title restrictions on such lands;

(2) Exchange property held in the park land trust for property of equal or greater value which is owned publicly or privately and which has greater potential for park and recreation purposes, property which could be more efficiently managed by the department, or property which could be traded for other lands with high park and recreation potential. No power of eminent domain is hereby granted to the department;

(3) Sell property held in the park land trust as provided in [section 67-4227, Idaho Code](#), at a price not less than its appraised value, and use the proceeds from such sale to acquire property for the park land trust which has substantial potential for park and recreation purposes, which can be efficiently managed by the department, or which can be traded for other lands with high park and recreation potential.

History.

[I.C., § 67-4242](#), as added by 1989, ch. 386, § 3, p. 961.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the introductory paragraph was added by the compiler to correct the name of the referenced agency. See § 67-4221.

§ 67-4243. Control, management, and administration of property held in park land trust. — The department of parks and recreation shall control, manage, and administer the property held in the park land trust as provided in chapter 42, title 67, Idaho Code. The department of parks and recreation shall, on all lands that were subject to ad valorem taxes on the day prior to the date of acquisition by the park land trust, consult with the county commissioners to determine impact of the acquisition and consider an in lieu of fee as if the lands had continued to be subject to ad valorem taxes.

History.

I.C., § 67-4243, as added by 1989, ch. 386, § 4, p. 961.

§ 67-4244. Appropriation — Use of income. — The legislature may authorize an appropriation of moneys in the park land account, which is hereby created in the agency asset fund of the state treasurer, for the purposes of this chapter. Income from the sale or management of property in the park land trust shall be returned as a recovered expense to the park land account and may be used to acquire property under section 67-4224, Idaho Code. All interest earned on idle moneys in the park land account shall accrue to that account.

History.

I.C., § 67-4244, as added by 1989, ch. 386, § 5, p. 961.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

§ 67-4245. Short title. — This act shall be known as the “State Trust for Outdoor Recreation Enhancement (STORE) Act.”

History.

I.C., § 67-4245, as added by 1995, ch. 332, § 1, p. 1103.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1995, Chapter 332, which is compiled as §§ 67-4223 and 67-4245 to 67-4249.

The word enclosed in parentheses so appeared in the law as enacted.

§ 67-4246. Legislative intent. — The legislature finds that outdoor recreation is a primary force in providing important social, personal, resource, and economic benefits to the people of Idaho. The legislature further recognizes that in order to obtain the optimum benefit to the people of Idaho, it is necessary to create a reliable source of revenues which will provide funding for capital improvements, repairs, renovations, land acquisition and a recreation incentive program which will enhance Idaho's local and state park and outdoor recreation opportunities and which will provide alternative activities (to crime or delinquency) for youth and young adults in cooperation with Idaho's education and law enforcement agencies. The purpose of this act is to establish a trust fund that will generate sufficient revenue to provide stable funding to address Idaho's outdoor recreation needs.

History.

I.C., § 67-4246, as added by 1995, ch. 332, § 1, p. 1103.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in the last sentence refers to S.L. 1995, Chapter 332, which is compiled as §§ 67-4223 and 67-4245 to 67-4249.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-4247. State trust fund for outdoor recreation enhancement — Creation, administration, eligible recipients. — (1) There is hereby created and established in the state treasury a fund to be known and designated as the “state trust for outdoor recreation enhancement (STORE).” The park and recreation board may dedicate funds acquired by gift, agreement, donation, appropriation or otherwise to the STORE fund.

(2) Commencing with the passage and approval of this act, all interest income from the STORE fund is hereby appropriated to, and is to be administered by, the park and recreation board for the purpose of carrying out the provisions of this act.

(a) Up to fifteen percent (15%) of the STORE fund interest income appropriated to the department each year may be used by the department to defray STORE program administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the STORE fund.

(b) The park and recreation board may return interest income to the STORE fund to increase the trust principal.

(3) The department shall use the moneys appropriated from the interest income on the STORE fund to:

(a) Operate a grant program to fund capital improvements, repairs, renovations, and land acquisitions that enhance opportunities for outdoor recreation. Indoor swimming pools and indoor ice rinks shall be eligible to receive grant funding provided use is primarily for public recreation. Grant recipients shall be required to provide a fifty percent (50%) match for all grants.

(b) Organize and operate a recreation incentive program to initiate positive growth activities for children and young adults and which will assist rural communities to meet the growing demand for recreation services.

(4) The state of Idaho and any of its subdivisions legally authorized to provide public recreation facilities may apply for and receive grant funds.

(5) Because public, private, and corporate moneys will be contributed to the STORE fund, it is the intent of the legislature to protect the STORE fund against appropriations for purposes other than those stated in this act.

History.

I.C., § 67-4247, as added by 1995, ch. 332, § 1, p. 1103; am. 1996, ch. 61, § 1, p. 178.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term “this act” in subsection (2) refers to S.L. 1995, Chapter 322, which is compiled as §§ 67-4223 and 67-4245 to 67-4249.

The term “this act” in subsection (5) refers to S.L. 1996, Chapter 61, which is codified as this section.

The word enclosed in parentheses so appeared in the law as enacted.

§ 67-4247A. State trust fund for outdoor recreation enhancement — grant evaluation committee. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 3, effective April 3, 2012.

History.

I.C., § 67-4247A, as added by 1996, ch. 61, § 2, p. 178.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 255 provided: “Legislative Intent. It is the intent of the Legislature to repeal statutes involving inactive programs that require appointment of members of the Legislature. In addition to the repealed sections in this act, it is legislative intent that no legislative appointment be made for the purposes of the Idaho Commemorative Silver Medallions as provided in [Section 67-1223, Idaho Code](#), until the State Treasurer issues a new series of medallions at which time such legislative appointments would be appropriate.”

§ 67-4248. Management of funded projects and lands. — (1) Grant recipients must enter into a contract with the park and recreation board which specifies that all property acquired, developed, repaired, renovated or improved with grant funds from the STORE shall be held in perpetuity for outdoor recreation by the grant recipient.

(a) Upon approval from the park and recreation board, trails acquired, developed, repaired, renovated or improved through STORE grant funds may be exempted from this requirement.

(b) Property acquired, developed, repaired, renovated or improved with STORE grant funds, and all recreation incentive programs funded by moneys from the STORE, shall be operated and maintained as being open and available for public use.

(2) Upon approval from the park and recreation board, property acquired, developed, renovated or improved through STORE may be converted to non-recreation purposes when, in the board's opinion, all practical alternatives to the conversion have been evaluated and rejected on a sound basis, there is not irreparable damage caused to the state's recreation infrastructure as a result of the proposed action, the grant recipient has provided for ample public involvement in the conversion, and the recreation utility lost is mitigated by the grant recipient.

(a) Conversions generally occur when property interests are conveyed for nonpublic outdoor recreation use, nonoutdoor recreation uses (public or private) are made of the project area or a portion thereof, noneligible outdoor recreation facilities are developed within the project area, or public outdoor recreation use is terminated.

(b) The following are not considered conversions but require the approval of the park and recreation board: (i) granting underground utility easements which do not have significant impact upon the recreation utility of the facility; and (ii) constructing public indoor recreation facilities where it can be demonstrated that there is an increased benefit to public recreational opportunities without a decrease in the outdoor recreation utility of the STORE assisted area.

(c) The project sponsor may mitigate the conversion by replacing the loss of recreation utility caused by the conversion or by reimbursing the STORE the fair market value of converted property as developed. The reimbursement shall be returned to the STORE fund for redistribution.

(d) Recreation utility shall be established by the fair market value of the property to be converted, the type and amount of use occurring on the property, equivalent usefulness and location of converted property and other factors the park and recreation board may consider relevant and may be mitigated by placing land previously not in recreation use into recreation use or by improving recreation opportunities on previously developed land commensurate to the loss of recreation utility caused by the conversion.

(3) The department may, by rule, impose a fee to defray the department's cost of administration and management of this replacement process.

History.

I.C., § 67-4248, as added by 1995, ch. 332, § 1, p. 1103.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-4249. Rules. — The Idaho park and recreation board shall adopt rules as necessary to administer the provisions of this act in accordance with legislative intent.

History.

I.C., § 67-4249, as added by 1995, ch. 332, § 1, p. 1103.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1995, Chapter 332, which is compiled as §§ 67-4223 and 67-4245 to 67-4249.

Chapter 43
PRESERVATION OF CERTAIN LAKES AS HEALTH
RESORTS AND RECREATION PLACES

Sec.

67-4301. Big Payette Lake — Appropriation of waters in trust for people.

67-4302. Big Payette Lake — Lands devoted to health and recreational uses.

67-4303. Big Payette Lake — Separability of act.

67-4304. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Appropriation of waters in trust for people.

67-4305. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Lands devoted to health and recreational use.

67-4306. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Separability of act.

67-4307. Malad Canyon — Appropriation of waters in trust for people — Lands devoted to recreational use.

67-4308. Niagara Springs — Appropriation of waters in trust for people.

67-4309. Big Springs — Appropriation of waters in trust for people.

67-4310. Box Canyon — Appropriation of waters in trust for people — Lands devoted to natural scientific study and limited recreational use — Legislative finding of fact concerning desirability of public use of water and private land within upper Box Canyon — Legislative direction for cooperation by state agencies to facilitate negotiations.

67-4311. Thousand Springs — Appropriation of waters in trust for people — Lands devoted to recreational use upon cessation of electrical generation.

67-4312. Permits for appropriation under sections 67-4307 — 67-4311.

§ 67-4301. Big Payette Lake — Appropriation of waters in trust for people. — The governor is hereby authorized and directed to appropriate in trust for the people of the state of Idaho all the unappropriated water of Big Payette Lake, or so much thereof as may be necessary to preserve said lake in its present condition. The preservation of said water in said lake for scenic beauty, health and recreation purposes necessary and desirable for all the inhabitants of the state is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the governor or the permit issued in connection therewith, and no proof of completion of any works of diversion shall be required, but license shall issue at any time upon proof of beneficial use to which said waters are now devoted.

Each succeeding governor in office shall be deemed to be a holder of such permit, in trust for the people of the state.

History.

1925, ch. 83, § 1, p. 117; I.C.A., § 65-4001.

CASE NOTES

Cited *State v. United States*, 134 Idaho 106, 996 P.2d 806 (2000).

§ 67-4302. Big Payette Lake — Lands devoted to health and recreational uses. — The lands belonging to the state of Idaho between the ordinary high and low water mark at said Big Payette Lake, as well as all other lands of the state adjacent to said lake which are not held in trust for the beneficiaries of the endowed institutions, are hereby declared to be devoted to a public use in connection with the preservation of said lake in its present condition as a health resort and recreation place for the inhabitants of the state and said public use is hereby declared to be a more necessary use than the use of said lands as a storage reservoir for irrigation or power purposes.

History.

1925, ch. 83, § 2, p. 117; I.C.A., § 65-4002; am. 1996, ch. 268, § 1, p. 870.

§ 67-4303. Big Payette Lake — Separability of act. — If any part of this act shall be adjudged to be invalid, such judgment shall not affect, impair or invalidate any part of the remainder.

History.

1925, ch. 83, § 3, p. 117; I.C.A., § 65-4003.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1925, Chapter 83, which is compiled as §§ 67-4301 to 67-4303.

Effective Dates.

Section 4 of S.L. 1925, ch. 83 declared an emergency. Approved February 25, 1925.

§ 67-4304. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Appropriation of waters in trust for people. — The governor is hereby authorized and directed to appropriate in trust for the people of the state of Idaho all the unappropriated water of Priest, Pend d'Oreille and Coeur d'Alene Lakes or so much thereof as may be necessary to preserve said lakes in their present condition. The preservation of said water in said lakes for scenic beauty, health, recreation, transportation and commercial purposes necessary and desirable for all the inhabitants of the state is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the governor or the permit issued in connection therewith, and no proof of completion of any works of diversion shall be required, but license shall issue at any time upon proof of beneficial use to which said waters are now devoted.

Each succeeding governor in office shall be deemed to be a holder of such permit, in trust for the people of the state.

History.

1927, ch. 2, § 1, p. 6; I.C.A., § 65-4004.

STATUTORY NOTES

Cross References.

Outlet control structure located in Priest River, § 70-501 et seq.

CASE NOTES

Tribal Land.

Where action was filed by Indian tribe against the state of Idaho and various state officials and agencies, seeking an order from the court quieting title in the tribe to the beds, banks, and waters of all navigable watercourses within the 1873 boundaries of the Coeur d'Alene Reservation, and the complaint further sought to declare invalid all Idaho statutes and ordinances which regulated or affected in any way the disputed lands and waters, and

to declare invalid the water right set forth in this section, the court found that the claims brought by the tribe were barred by the [Eleventh Amendment to the United States Constitution](#), and the tribe had failed to state a claim upon which relief could be granted. [Coeur d'Alene Tribe v. Idaho](#), 798 F. Supp. 1443 (D. Idaho 1992), rev'd in part, 42 F.3d 1244 (9th Cir. 1994), rev'd in part, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

Suit by federally recognized Indian tribe brought in federal court against the state and various state agencies, and numerous state officials in their individual capacities, seeking title to the banks and submerged lands of lake and various rivers and streams that were within their reservation and a declaratory judgment to establish its entitlement to the exclusive use, occupancy and right to quiet enjoyment of the submerged lands, as well as a declaration of the invalidity of all Idaho statutes, ordinances, regulations, customs or usages which purport to regulate, authorize, use or affect in any way the submerged land and a permanent injunction prohibiting the state from permitting or taking any action in violation of the tribe's rights of exclusive use, was barred by Idaho's [Eleventh Amendment](#) immunity since the exception of *Ex Parte Young*, 209 U.S. 123, 52 L Ed. 714, 28 S. Ct. 441 (1908), did not apply and a state forum was available to hear such claims. [Idaho v. Coeur d'Alene Tribe](#), 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

Cited [West v. Smith](#), 95 Idaho 550, 511 P.2d 1326 (1973); [State v. United States](#), 134 Idaho 106, 996 P.2d 806 (2000).

§ 67-4305. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Lands devoted to health and recreational use. — The lands belonging to the state of Idaho between the ordinary high and low water mark at said lakes as well as all other lands of the state adjacent to said lake [lakes] which are not held in trust for the beneficiaries of the endowed institutions, are hereby declared to be devoted to a public use in connection with the preservation of said lakes in their present condition as a health resort and recreation place for the inhabitants of the state and said public use is hereby declared to be a more necessary use than the use of said lands as a storage reservoir for irrigation or power purposes.

History.

1927, ch. 2, § 2, p. 6; I.C.A., § 65-4005; am. 1996, ch. 268, § 2, p. 870.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the middle of the section was added by the compiler to supply the probable intended term.

CASE NOTES

Appeal.

Suit barred.

Appeal.

Because environmental groups, challenging timber sales on school endowment trust lands approved by the state board of land commissioners and the Idaho department of lands, did not assert their claim that § 36-1601 or this section provided an independent grounds for relief below, neither argument could be addressed for the first time on appeal. *Selkirk-Priest Basin Ass'n v. State ex rel. Andrus*, 127 Idaho 239, 899 P.2d 949 (1995).

Suit Barred.

Suit by federally recognized Indian tribe brought in federal court against the state and various state agencies, and numerous state officials in their individual capacities seeking title to the banks and submerged lands of lake and various rivers and streams that were within their reservation and a declaratory judgment to establish its entitlement to the exclusive use occupancy and right to quiet enjoyment of the submerged lands, as well as a declaration of the invalidity of all Idaho statutes, ordinances, regulations, customs or usages which purport to regulate, authorize, use or affect in any way the submerged land and a permanent injunction prohibiting the state from permitting or taking any action in violation of the tribe's rights of exclusive use, was barred by Idaho's **Eleventh Amendment** immunity since the exception of *Ex Parte Young*, 209 U.S. 123, 52 L. Ed. 714, 28 S. Ct. 441 (1908), did not apply and a state forum was available to hear such claims. *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

Cited *West v. Smith*, 95 Idaho 550, 511 P.2d 1326 (1973).

§ 67-4306. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Separability of act. — If any part of this act shall be adjudged to be invalid, such judgment shall not affect, impair or invalidate any part of the remainder.

History.

1927, ch. 2, § 3, p. 6; I.C.A., § 65-4006.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1927, Chapter 2, which is compiled as §§ 67-4304 to 67-4306.

Effective Dates.

Section 4 of S.L. 1927, ch. 2 declared an emergency. Approved January 24, 1927.

§ 67-4307. Malad Canyon — Appropriation of waters in trust for people — Lands devoted to recreational use. — The park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

The south half (1/2) of the southwest quarter (1/4), and the south half (1/2) of the southeast quarter (1/4), of section twenty-five (25), township six (6) south, range thirteen (13) east of the Boise Meridian; and

The north half (1/2) of the northwest quarter (1/4), and the northwest quarter (1/4) of the northeast quarter (1/4), of section thirty-six (36), township six (6) south, range thirteen (13) east of the Boise Meridian.

The preservation of water in the area described for its scenic beauty and recreational purposes necessary and desirable for all citizens of the state of Idaho is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the park and recreation board or the permit issued in connection therewith, but license shall issue at any time upon proof of beneficial use to which said waters are now dedicated.

The park and recreation board, or its successor, shall be deemed to be the holder of such permit, in trust for the people of the state, and the public use of the unappropriated water in the specific area herein described is declared to be of greater priority than any other use except that of domestic consumption.

The unappropriated lands belonging to the state of Idaho between the high water mark on one (1) bank to the high water mark on the opposite bank, of the area described, are hereby declared to be devoted to a public use in connection with the preservation of the area in its present condition as a place of recreation for the citizens of the state of Idaho.

History.

I.C., § 67-4307, as added by 1971, ch. 207, § 1, p. 912; am. 1974, ch. 8, § 12, p. 35.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

CASE NOTES

Construction.

Although § 42-202 requires a proposal for physical diversion in order to get a permit to appropriate water, such a requirement does not apply to this section since, where a general and specific statute deal with same subject and are in conflict, the provisions of the more specific (this section) control. *State, Dep't of Parks v. Idaho Dep't of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974).

Cited *State v. United States*, 134 Idaho 106, 996 P.2d 806 (2000).

§ 67-4308. Niagara Springs — Appropriation of waters in trust for people. — The park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

That portion of lot one (1), of section ten (10), and lot three (3), of section eleven (11), township nine (9) south, range fifteen (15) east of the Boise Meridian, which is locally known as the Niagara Springs and limited to that portion of Niagara Springs upstream from the present existing diversions to the headwaters of the springs.

The preservation of water in the area described for its scenic beauty and recreational purposes necessary and desirable for all citizens of the state of Idaho is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the park and recreation board or the permit issued in connection therewith, but license shall issue at any time upon proof of beneficial use to which said waters are now dedicated.

The park and recreation board, or its successor, shall be deemed to be the holder of such permit, in trust for the people of the state, and the public use of the waters in the specific area herein described is declared to be of greater priority than any other use except that of domestic consumption.

History.

I.C., § 67-4308, as added by 1971, ch. 207, § 2, p. 912; am. 1974, ch. 8, § 13, p. 35; am. 2015, ch. 244, § 55, p. 1008.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 244, substituted “Niagara” for “Niagra” in the section heading and twice in the second paragraph.

CASE NOTES

Allowable Area of Appropriations Defined.

This section is clear and unambiguous in defining the allowable area of appropriations of water by the Idaho department of parks and recreation as the portion of the natural springs upstream from the highest existing diversion to the headwaters of the springs at the time the statute was enacted in 1971. *Rim View Trout Co. v. Higginson*, 121 Idaho 819, 828 P.2d 848 (1992), overruled on other grounds, *Verska v. St. Alphonsus Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011).

§ 67-4309. Big Springs — Appropriation of waters in trust for people. — The park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

That portion of the southwest quarter (1/4) of the southwest quarter (1/4) of section twenty-one (21) and lot one (1) of section twenty-eight (28), township eight (8) south, range fourteen (14) east of the Boise Meridian, which constitutes the Big Springs, but, excluding the streams known as the Snake River.

The preservation of water in the area described, known locally as Big Springs, Heart, or Blue Heart Springs, for its scenic beauty and recreational purposes necessary and desirable for all citizens of the state of Idaho is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the park and recreation board or the permit issued in connection therewith, but license shall issue at any time upon proof of beneficial use to which said waters are now dedicated.

The park and recreation board, or its successor, shall be deemed to be the holder of such permit, in trust for the people of the state, and the public use of the waters in the specific area herein described is declared to be of greater priority than any other use except that of domestic consumption.

History.

I.C., § 67-4309, as added by 1971, ch. 207, § 3, p. 912; am. 1974, ch. 8, § 14, p. 35.

§ 67-4310. Box Canyon — Appropriation of waters in trust for people — Lands devoted to natural scientific study and limited recreational use — Legislative finding of fact concerning desirability of public use of water and private land within upper Box Canyon — Legislative direction for cooperation by state agencies to facilitate negotiations. — The park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

Only that portion of the stream which is known as Box Canyon Creek, situated in the northwest quarter (NW 1/4) of section 27, township 8 south, range 14 east of the Boise Meridian; and

The east half (E 1/2) of the northeast quarter (NE 1/4), in section 28, township 8 south, range 14 east of the Boise Meridian.

The preservation of water in the area described for its scenic beauty, natural scientific study value, and limited recreational purposes necessary and desirable for all citizens of the state of Idaho is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the park and recreation board or the permit issued in connection therewith, but license shall issue at any time upon proof of beneficial use to which said waters are now dedicated.

The park and recreation board, or its successor, shall be deemed to be the holder of such permit, in trust for the people of the state, and the public use of the waters in the specific area herein described is declared to be of greater priority than any other use except that of domestic consumption.

It is a legislative finding of fact that the waters arising upon the above described tract within the natural channel of Box Canyon Creek and the private lands within the confines of the canyon walls are desirable for public use in connection with the preservation of the area in its present condition as a place for natural scientific studies and limited recreation for the citizens of the state of Idaho.

The state board of land commissioners is hereby authorized to adjust the boundary established by the provisions of this section by excluding from the operation of this section those lands and waters lying downstream from a point one hundred (100) feet downstream from the crest of the falls in the west half (W 1/2) of the northwest quarter (NW 1/4) of section 27, township 8 south, range 14 east, Boise Meridian, provided they are successful in negotiating with the present landowner, or his successors, those restrictive covenants deemed necessary by the board to promote the public interest for the canyon lands as well as for the waters arising within that canyon, all as declared by this section, and the state board of land commissioners is authorized to expedite the negotiations with the landowner so far as is consistent with the public interest. In order to facilitate these negotiations, all concerned state agencies, namely the department of water resources, the department of fish and game, and the department of parks and recreation are hereby instructed to cooperate with the state board of land commissioners and with the property owner as necessary to assist the orderly, factual, and amicable process of negotiation between the state board of land commissioners and the property owner.

History.

I.C., § 67-4310, as added by 1971, ch. 207, § 4, p. 912; am. 1974, ch. 8, § 15, p. 35; am. 1982, ch. 369, § 1, p. 927.

STATUTORY NOTES

Cross References.

Department of parks and recreation, § 67-4218.

Department of water resources, § 42-1701 et seq.

Fish and game department, § 36-101.

State board of land commissioners, Idaho Const., Art. IX, § 7 and § 58-101 et seq.

Effective Dates.

Section 2 of S.L. 1982, ch. 369 declared an emergency. Approved April 2, 1982.

§ 67-4311. Thousand Springs — Appropriation of waters in trust for people — Lands devoted to recreational use upon cessation of electrical generation. — Upon cessation of the use of the waters arising upon the land described herein, for electrical generation, the park and recreation board is hereby authorized and directed to appropriate in trust for the people of the state of Idaho the unappropriated natural spring flow arising upon the area described as follows, to-wit:

The west half (1/2) of the southeast quarter (1/4), of section eight (8), township eight (8) south, range fourteen (14) east of the Boise Meridian.

The preservation of water in the area described for its scenic beauty and recreational purposes necessary and desirable for all citizens of the state of Idaho is hereby declared to be a beneficial use of such water.

No fee shall be required in connection with said appropriation by the park and recreation board or the permit issued in connection therewith, but license shall issue at any time upon proof of beneficial use to which said waters are now dedicated.

The park and recreation board, or its successor, shall be deemed to be the holder of such permit, in trust for the people of the state, and the use of the unappropriated water in the specific area herein described is declared to be of greater priority than any other use except that of domestic consumption.

History.

I.C., § 67-4311, as added by 1971, ch. 207, § 5, p. 912; am. 1974, ch. 8, § 16, p. 35.

STATUTORY NOTES

Compiler's Notes.

Section 6 of S.L. 1971, ch. 207, read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

§ 67-4312. Permits for appropriation under sections 67-4307 — 67-4311. — The permits for the waters described in this act shall be issued upon the determination by the director of the department of water resources of the historical water flow and he shall issue a permit for only that amount. Any future appropriation of the waters specifically described in this act that are granted above the flow limits set by the director shall not involve any diversion that shall detract from or interfere with the geological interpretive value, historical significance, or the scenic attraction for public use under the administration of the park and recreation board of the stream from the natural high water mark on one (1) bank to the natural high water mark on the opposite bank, or of the springs specifically described as they arise upon the lands listed in this act.

The park and recreation board shall apply first for those permits for water arising upon land which, at the time of enactment, the board administers, controls, or owns.

History.

1971, ch. 207, § 7, p. 912; am. 1974, ch. 8, § 17, p. 35.

STATUTORY NOTES

Cross References.

Director of department of water resources, § 42-1701.

Compiler's Notes.

The term “this act” in the first paragraph refers to S.L. 1971, Chapter 207, which is compiled as §§ 67-4307 to 67-4312.

Chapter 44

LAVA HOT SPRINGS

Sec.

67-4401. Management and control.

67-4402. Powers and duties of foundation.

67-4403. Description of property.

67-4404. Executive director — Appointment, powers, and duties.

67-4405. Receipts and appropriation inuring to use of foundation.

67-4406. Lease of property authorized.

67-4407. Suspension of Lava Hot Springs Foundation Act upon leasing.

67-4408. Appropriation for operation when not leased.

67-4409. Lava Hot Springs capital improvement account.

§ 67-4401. Management and control. — All right to the operation, management and control, and to the maintenance and improvement of the lands and property belonging to the state of Idaho situated within and near the city of Lava Hot Springs, in Bannock County, state of Idaho, hereinafter more particularly described is hereby vested in the Lava Hot Springs Foundation which shall be an agency within the department of parks and recreation. Said foundation shall consist of five (5) members who shall be appointed by the governor and who shall hold office for a term of six (6) years, save and except the first members who shall be appointed by the governor as follows: one (1) to be appointed for a term of six (6) years, one (1) to be appointed for a term of four (4) years and one (1) to be appointed for a term of two (2) years, and thereafter as their terms expire the governor to appoint their successors for terms of six (6) years. At least one (1) member shall be a resident of the city of Lava Hot Springs. The members shall be compensated as provided by section 59-509(g), Idaho Code. The said foundation shall not receive any property from, nor operate any school, college or institution of learning.

History.

1919, ch. 30, § 1, p. 16; am. 1949, ch. 137, § 1, p. 242; am. 1974, ch. 8, § 18, p. 35; am. 1978, ch. 279, § 1, p. 677; am. 1980, ch. 247, § 84, p. 582; am. 1989, ch. 172, § 1, p. 420.

STATUTORY NOTES

Cross References.

Cession to federal government, §§ 58-703, 58-704.

Department of parks and recreation, § 67-4218.

Compiler's Notes.

The act by which Lava Hot Springs was granted to the state is as follows: Chapter 1076 — An act to grant certain lands to the state of Idaho. Be it enacted by the senate and house of representatives of the United States of America in congress assembled, That lots 7 and 8 in section 21, northwest

quarter of the southwest quarter, and lots 9 and 10 in section 22, all in township 9 south, range 38 east, base meridian, in the state of Idaho, are hereby ceded, granted, relinquished and conveyed unto the said state of Idaho, to be held by said state for public use under such regulations as said state may prescribe. Approved June 13, 1902, 32 St. L. 330.

Effective Dates.

Section 26 of S.L. 1974, ch. 8 provided this act be in full force and effect on and after July 1, 1974.

OPINIONS OF ATTORNEY GENERAL

Water Rights.

The rights to the use of all hot waters that rise and flow at Lava Hot Springs are water rights that have been appropriated under state law and are subject to regulation by the Idaho department of water resources under the provisions of title 42 of the Idaho Code (§§ 42-101, 42-103, 42-104 and 42-106). OAG 97-1.

The use of the terms “water rights” and “appurtenant” in sections 58-703 and 58-704 in reference to the lands at Lava Springs is a strong indicator that the Lava Springs Foundation merely controlled the use of the water under a traditional state water right that is appurtenant to lands at Lava Hot Springs. OAG 97-1.

Waste Water.

The Lava Springs Foundation has the authority under title 67, [chapter 44, Idaho Code](#), to enter into agreements involving easements with private parties to discharge the Foundation’s waste water. However, the Foundation may not authorize the use of any portion of its water in a manner that is inconsistent with its state water right. Other parties seeking to use the Foundation’s waste water for new uses or on lands other than the authorized place of use must file for a permit from the Idaho department of water resources. OAG 97-1.

Prior Appropriation.

Since Idaho [Const., Art. XV, § 3](#) and [§§ 42-101, 42-103, 42-104 and 42-106](#) specify the law of prior appropriation as the method to establish the

right to use water in Idaho, absent a clear statutory expression by the legislature to create an exception to the appropriation statutes, all rights to the use of water in Idaho must be acquired by appropriation and the language in §§ 67-4401 and 67-4403 is not a clear expression that the legislature intended to create an exception from the appropriation process for the waters at Lava Hot Springs as the most reasonable interpretation of this language is that the Foundation's jurisdiction and control over waters at Lava Hot Springs refers to those waters that have already been appropriated or that will be appropriated in the future. OAG 97-1.

§ 67-4402. Powers and duties of foundation. — The foundation shall have powers and duties as follows:

(1) To take charge of all personal property and the lands and property of the state of Idaho situated within and near the village of Lava Hot Springs and hereinafter more fully described and to have a general supervision and control of all buildings, improvements, and property appertaining thereto.

(2) To lease any real or personal property not used or needed by the foundation for a period not exceeding ninety-nine (99) years, to any individual or company, subject to approval by the board of examiners of the state of Idaho. Any lease entered into pursuant to this section shall be exempt from limitation as to term of lease as set forth in [section 58-307, Idaho Code](#).

(3) To enter into contracts with federal, state, and local governmental agencies for flood control projects and measures, for multiple use water resource development, and for any other project or measure incidental or conducive to the attainment of the purposes of the foundation.

(4) To exercise such powers as are incidental or conducive to the attainment of the purposes of the foundation, including the power to contract and the power to sue and be sued.

(5) To promulgate such rules as may be necessary to discharge the duties of the foundation.

(6) To employ such personnel as may be necessary for the administration of its duties in accordance with the rules of the administrator of the division of human resources promulgated pursuant to chapter 52, title 67, Idaho Code.

(7) To appoint an executive director of the foundation as provided herein and to advise him in the performance of his duties and his formulation of general policies affecting the foundation.

(8) To encourage and promote interest in the Lava Hot Springs properties and in the foundation.

(9) To hold an annual meeting during the month of January in each year and, in addition thereto, at such other times as the said members may prescribe.

(10) To have and use an official seal.

History.

1919, ch. 30, § 2, p. 108; C.S., § 1291; I.C.A., § 65-4102; am. 1935, ch. 5, § 2, p. 16; am. 1959, ch. 266, § 1, p. 561; am. 1965, ch. 108, § 1, p. 213; am. 1978, ch. 279, § 2, p. 677; am. 2002, ch. 55, § 1, p. 122.

STATUTORY NOTES

Cross References.

Administrator of division of human resources, § 67-5308.

Board of examiners, § 67-2001 et seq.

Effective Dates.

Section 2 of S.L. 1965, ch. 108 declared an emergency. Approved March 8, 1965.

OPINIONS OF ATTORNEY GENERAL

Waste Water.

The Lava Springs Foundation has the authority under title 67, [chapter 44, Idaho Code](#), to enter into agreements involving easements with private parties to discharge the Foundation's waste water. However, the Foundation may not authorize the use of any portion of its water in a manner that is inconsistent with its state water right. Other parties seeking to use the Foundation's waste water for new uses or on lands other than the authorized place of use must file for a permit from the Idaho department of water resources. OAG 97-1.

§ 67-4403. Description of property. — Description of property: The property hereinbefore referred to, and herewith placed under the jurisdiction and control of the said foundation, is described as follows: The northwest quarter (1/4) of the southwest quarter (1/4), and lots nine (9) and ten (10) in section twenty-two (22), and lots seven (7) and eight (8) in section twenty-one (21) in township nine (9), south, range thirty-eight (38) east of the Boise meridian, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the hot springs and hot waters arising and flowing thereon, in Bannock County, state of Idaho.

History.

1919, ch. 30, § 3, p. 108; C.S., § 1292; I.C.A., § 65-4103; am. 1935, ch. 5, § 3, p. 16.

OPINIONS OF ATTORNEY GENERAL

Waste Water.

The Lava Springs Foundation has the authority under title 67, [chapter 44, Idaho Code](#), to enter into agreements involving easements with private parties to discharge the Foundation's waste water. However, the Foundation may not authorize the use of any portion of its water in a manner that is inconsistent with its state water right. Other parties seeking to use the Foundation's waste water for new uses or on lands other than the authorized place of use must file for a permit from the Idaho department of water resources. OAG 97-1.

Power of Foundation.

The language in § 67-4403 placing jurisdiction and control of the hot springs and hot waters under the direction of the Lava Hot Springs Foundation is intended to refer to only those waters lawfully appropriated under state law. OAG 97-1.

Prior Appropriation.

Since Idaho Const., Art. XV, § 3 and §§ 42-101, 42-103, 42-104 and 42-106 specify the law of prior appropriation as the method to establish the right to use water in Idaho, absent a clear statutory expression by the legislature to create an exception to the appropriation statutes, all rights to the use of water in Idaho must be acquired by appropriation and the language in §§ 67-4401 and 67-4403 is not a clear expression that the legislature intended to create an exception from the appropriation process for the waters at Lava Hot Springs as the most reasonable interpretation of this language is that the Foundation's jurisdiction and control over waters at Lava Hot Springs refers to those waters that have already been appropriated or that will be appropriated in the future. OAG 97-1.

§ 67-4404. Executive director — Appointment, powers, and duties.

— The foundation shall appoint an executive director who shall serve at the pleasure of the foundation, and be qualified by reason of education, training, experience, and demonstrated ability to fill such position. The executive director shall exercise the following powers and duties in addition to all other powers and duties inherent in the position or delegated or imposed by the foundation:

- (1) Be a nonvoting member of the foundation and secretary thereto.
- (2) Be the administrative officer of the foundation.
- (3) Suggest such rules as may be necessary for the efficient operation of his office.

History.

1919, ch. 30, § 6, p. 108; C.S., § 1293; I.C.A., § 65-4104; am. 1935, ch. 5, § 4, p. 16; am. 2002, ch. 55, § 2, p. 122.

§ 67-4405. Receipts and appropriation inuring to use of foundation.

— The entire receipts of and from any source whatsoever that may inure to the benefit of the said foundation through its operation of the said property, bathing facilities, pleasure resort, hospital or sanitarium and the rents and royalties accruing from any mineral lease that shall be made of foundation lands shall be deposited in the Lava Hot Springs Foundation Fund, and all moneys now in or hereafter deposited in such fund are hereby appropriated for the use and benefit of the said Foundation.

History.

1919, ch. 30, § 5, p. 108; C.S., § 1294; I.C.A., § 65-4105; am. 1935, ch. 5, § 5, p. 16; am. 1953, ch. 139, § 1, p. 229.

STATUTORY NOTES

Compiler's Notes.

The first part of section 5 of S.L. 1919, ch. 30 appropriating \$12,000 out of moneys received from leases, rents, baths, etc., to be expended for maintenance and operation purposes was omitted as temporary. It was not clear whether the latter part of the section was intended to be temporary or permanent. It was therefore included in the subject-matter as amended.

Effective Dates.

Section 7 of S.L. 1935, ch. 5 declared an emergency. Approved February 6, 1935.

§ 67-4406. Lease of property authorized. — The state board of land commissioners and the Lava foundation board are hereby authorized to negotiate for and enter into an agreement of lease by which the lands granted to the state of Idaho by the act of congress approved June 13, 1902, and commonly referred to as the Lava Hot Springs Grant, being particularly described as the northwest quarter of the southwest quarter and lots 9 and 10 in section 22, and lots 7 and 8 in section 21, in township 9 south, range 38 east Boise meridian, together with the improvements, bathing facilities, equipment, personal property, tenements, hereditaments and appurtenances, shall be devoted to public use in conformity with the terms of the grant act above referred to, and in the manner and upon the terms required in addition by chapter 3, title 58[, Idaho Code].

History.

1943, ch. 164, § 1, p. 342.

STATUTORY NOTES

Cross References.

State board of land commissioners, Idaho [Const., Art. IX, § 7](#) and [§ 58-101 et seq.](#)

Compiler's Notes.

Lava Hot Springs Grant, Act of Congress approved June 13, 1902, see Compiler's Note under § 67-4401.

The bracketed insertion at the end of the section was added by the compiler to conform to the statutory citation style.

§ 67-4407. Suspension of Lava Hot Springs Foundation Act upon leasing. — Upon such lease becoming effective, and for the term of such lease, the provisions of the Lava Hot Springs Foundation Act, Chapter 5, 1935 Session Laws, amendatory of Chapter 41, Title 65, Idaho Code Annotated, [sections 67-4402 to 67-4405, Idaho Code,] shall be suspended and without operative force.

History.

1943, ch. 164, § 2, p. 342.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the end of the section was added by the compiler to specify the codification of the referenced session law.

§ 67-4408. Appropriation for operation when not leased. — There is hereby appropriated out of the Lava Hot Springs account the entire receipts of and from any sources whatsoever that may hereafter inure to the benefit of the Lava Hot Springs Foundation through its operation of the property of the said foundation, bathing facilities, pleasure resort, hospital or sanitarium. The foundation may also expend any other moneys that may be appropriated, donated, bequeathed or granted for the use of the foundation. Provided; that the appropriation herein made shall not be effective or the funds appropriated available during any period when the provisions of the Lava Hot Springs Foundation Act, Chapter 5 of the 1935 Session Laws, amendatory of Chapter 41, Title 65, Idaho Code Annotated, [sections 67-4402 to 67-4405, Idaho Code,] shall be suspended as herein provided.

History.

1943, ch. 164, § 3, p. 342; am. 1989, ch. 176, § 1, p. 427.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the end of the section was added by the compiler to specify the codification of the referenced session law.

Effective Dates.

Section 4 of S.L. 1943, ch. 164 declared an emergency. Approved March 8, 1943.

§ 67-4409. Lava Hot Springs capital improvement account. — There is hereby created and established in the agency asset fund in the state treasury an account to be known as the Lava Hot Springs capital improvement account to which shall be credited or deposited such moneys and interest accruing over and above the operation and maintenance cost from the Lava Hot Springs foundation account, as the members of the Foundation may from time to time determine. The purposes for which moneys in the account may be used shall be to acquire, purchase, improve, repair, furnish, and equip Lava Hot Springs facilities and sites. All claims against the account shall be examined, audited and allowed in the same manner now or hereafter provided by law for claims against the state. This account shall be invested by the state treasurer in investments permitted by section 67-1210, Idaho Code, and the interest shall be returned to the account.

History.

I.C., § 67-4409, as added by 1980, ch. 355, § 1, p. 919.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-4409, which comprised I.C., § 67-4409, as added by 1973, ch. 242, § 1, p. 494, was repealed by S.L. 1976, ch. 51, § 3, effective July 1, 1977.

Chapter 45

STATE SYMBOLS

Sec.

67-4501. State bird designated.

67-4502. State flower designated.

67-4503. State song designated.

67-4504. State tree designated.

67-4505. State gem designated.

67-4506. State horse designated.

67-4507. State fossil designated.

67-4508. State fish designated.

67-4509. State insect designated.

67-4510. State fruit designated.

67-4511. State vegetable designated.

67-4512. State raptor designated.

67-4513. State noxious and invasive weed awareness week.

67-4514. State amphibian designated.

§ 67-4501. State bird designated. — The Mountain Bluebird (*Sialia currucoides*) is hereby designated and declared to be the state bird of the state of Idaho.

History.

1931, ch. 64, § 1, p. 113; I.C.A., § 65-4201; am. 2015, ch. 244, § 56, p. 1008.

STATUTORY NOTES

Cross References.

State flag, § 46-801.

State seal, § 59-1005.

Amendments.

The 2015 amendment, by ch. 244, substituted “currucoides” for “arctcia”.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-4502. State flower designated. — The Syringa (Philadelphus lewisii) is hereby designated and declared to be the state flower of the state of Idaho.

History.

1931, ch. 75, § 1, p. 129; I.C.A., § 65-4202.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-4503. State song designated. — The song “Here We Have Idaho,” sometimes known as “Our Idaho,” the music for which was composed by Sallie Hume Douglas, is hereby designated and declared to be the state song of the state of Idaho; provided that credit is given to McKinley Helm for composing the words of the chorus as follows:

“And here we have Idaho

Winning her way to fame

Silver and gold in the sunlight blaze And romance lies in her name
Singing, we’re singing of you Ah, proudly too

All our lives thru

We’ll go singing, singing of you Singing of Idaho”.

Providing further, that credit is given to Albert J. Tompkins for composing the words of the verses as follows: First verse — “You’ve heard of the wonders our land does possess Its beautiful valleys and hills The majestic forests where nature abounds We love every nook and rill.”

Second verse — “There’s truly one state in this great land of ours Where ideals can be realized The pioneers made it so for you and me A legacy we’ll always prize.”

History.

1931, ch. 105, § 1, p. 254; I.C.A., § 65-4203; am. 1955, ch. 64, § 1, p. 125.

§ 67-4504. State tree designated. — The White Pine (*Pinus monticola*) is hereby designated and declared to be the state tree of the state of Idaho.

History.

1935, ch. 16, § 1, p. 35; am. 2015, ch. 244, § 57, p. 1008.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 244, substituted “*monticola*” for “*Monticolae*”.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-4505. State gem designated. — The star garnet is hereby declared to be the official state stone, or state gem, of the state of Idaho.

History.

1967, ch. 33, § 1, p. 56.

§ 67-4506. State horse designated. — The Appaloosa horse is hereby designated and declared to be the state horse of the state of Idaho.

History.

I.C., § 67-4506, as added by 1975, ch. 116, § 1, p. 239.

§ 67-4507. State fossil designated. — The Hagerman Horse Fossil (species *Equus simplicidens* originally described as *Plesippus shoshonensis*) is hereby designated and declared to be the state fossil of the state of Idaho.

History.

I.C., § 67-4507, as added by 1988, ch. 44, § 1, p. 50.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-4508. State fish designated. — The Cutthroat trout is designated and declared to be the state fish of the state of Idaho.

History.

I.C., § 67-4508, as added by 1990, ch. 218, § 2, p. 584.

§ 67-4509. State insect designated. — The monarch butterfly is designated and declared to be the state insect of Idaho.

History.

I.C., § 67-4509, as added by 1992, ch. 103, § 1, p. 322.

§ 67-4510. State fruit designated. — The huckleberry is hereby designated and declared to be the state fruit of the state of Idaho.

History.

I.C., § 67-4510, as added by 2000, ch. 279, § 2, p. 901.

Idaho Code § 67-4511

§ 67-4511. State vegetable designated. — The potato is hereby designated and declared to be the state vegetable of the state of Idaho.

History.

I.C., § 67-4511, as added by 2002, ch. 77, § 2, p. 174.

§ 67-4512. State raptor designated. — The Peregrine Falcon is hereby designated and declared to be the state raptor of the state of Idaho.

History.

I.C., § 67-4512, as added by 2004, ch. 384, § 2, p. 1147.

§ 67-4513. State noxious and invasive weed awareness week. — Every year, starting in 2014, the week prior to the Memorial Day weekend shall hereby be designated as “Idaho Noxious and Invasive Weed Awareness Week.” This week shall serve as a week to educate Idaho’s citizens about the serious impacts of noxious and invasive plants and their direct impacts to Idaho’s economy, waters, lands and agriculture. Those entities already tasked with promoting noxious and invasive weed control and education and outreach are encouraged to lead the charge in celebrating “Idaho Noxious and Invasive Weed Awareness Week” and educating Idaho’s citizens to help stop the spread of noxious and invasive weeds.

History.

I.C., § 67-4513, as added by 2014, ch. 66, § 1, p. 169.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 2014, ch. 66 declared an emergency. Approved March 1, 2014.

Idaho Code § 67-4514

§ 67-4514. State amphibian designated. — The Idaho Giant Salamander is hereby designated and declared to be the state amphibian of the state of Idaho.

History.

I.C., § 67-4514, as added by 2015, ch. 218, § 1, p. 680.

Chapter 46

PRESERVATION OF HISTORIC SITES

Sec.

67-4601. Purpose.

67-4602. Definitions.

67-4603. Preservation commissions authorized — Members —
Appointment — Term — Staff.

67-4604. Powers and duties of commissions.

67-4605. Funding of operations.

67-4606. Acquisition of property.

67-4607. Historic districts.

67-4608. Certificate of appropriateness.

67-4609. Change in use.

67-4610. Notice to owner — Appeal.

67-4611. Ordinary repairs — Safety.

67-4612. Special restrictions.

67-4613. Historic easements.

67-4614. Designation as historic property.

67-4615. Procedure for designation.

67-4616. Change in use of historic property.

67-4617. Penalties.

67-4618. Exemption from health or building codes.

67-4619. Transfer of development rights.

§ 67-4601. Purpose. — Whereas the legislature of this state has determined that the historical, archeological, architectural and cultural heritage of the state is among the most important environmental assets of the state and furthermore that the rapid social and economic development of contemporary society threatens to destroy the remaining vestiges of this heritage, it is hereby declared to be the public policy and in the public interest of this state to engage in a comprehensive program of historic preservation, undertaken at all levels of the government of this state and its political subdivisions, to promote the use and conservation of such property for the education, inspiration, pleasure and enrichment of the citizens of this state. It is hereby declared to be the purpose of this act to authorize the local governing bodies of this state to engage in a comprehensive program of historic preservation.

History.

I.C., § 67-4601, as added by 1975, ch. 142, § 2, p. 324.

STATUTORY NOTES

Prior Laws.

Former §§ 67-4601 to 67-4606, which comprised S.L. 1945, ch. 153, §§ 1 to 6, p. 229, concerning the establishment of a commission for the erection of a statue for William E. Borah, were repealed by S.L. 1975, ch. 142, § 1.

Compiler's Notes.

The term “this act” in the last sentence refers to S.L. 1975, Chapter 142, which is compiled as §§ 67-4601 to 67-4619.

§ 67-4602. Definitions. — As used in this act:

a. “Historic property” shall mean any building, structure, area or site that is significant in the history, architecture, archeology or culture of this state, its communities or the nation.

b. “Historic preservation” shall mean the research, protection, restoration and rehabilitation of buildings, structures, objects, districts, areas, and sites significant in the history, architecture, archeology or culture of this state, its communities or the nation.

History.

I.C., § 67-4602, as added by 1975, ch. 142, § 2, p. 324.

STATUTORY NOTES

Prior Laws.

Former § 67-4602 was repealed. See Prior Laws, § 67-4601.

Compiler’s Notes.

The term “this act” in the introductory paragraph refers to S.L. 1975, Chapter 142, which is compiled as §§ 67-4601 to 67-4619.

§ 67-4603. Preservation commissions authorized — Members — Appointment — Term — Staff. — The governing body of any county or city is hereby authorized to establish a historic preservation commission hereinafter referred to as “the commission,” to preserve, promote, and develop the historical resources of such county or city in accordance with the provisions of this act. The commission shall consist of not less than five (5) and not more than ten (10) members, who shall be appointed by the governing body with due regard to proper representation of such fields as history, architecture, urban planning, archeology and law. All members of the commission shall serve terms not to exceed three (3) years, being eligible for reappointment as shall be specified by the governing body. The commission may employ such qualified staff personnel as it deems necessary.

History.

I.C., § 67-4603, as added by 1975, ch. 142, § 2, p. 324.

STATUTORY NOTES

Prior Laws.

Former § 67-4603 was repealed. See Prior Laws, § 67-4601.

Compiler’s Notes.

The term “this act” at the end of the first sentence refers to S.L. 1975, Chapter 142, which is compiled as §§ 67-4601 to 67-4619.

CASE NOTES

Cited Idaho Historic Preservation Council, Inc. v. Boise City Council, 134 Idaho 651, 8 P.3d 646 (2000).

§ 67-4604. Powers and duties of commissions. — Any county or city historic preservation commission established pursuant to this act shall be authorized to:

- a. Conduct a survey of local historic properties.
- b. Acquire fee and lesser interests in historic properties, including adjacent or associated lands, by purchase, bequest or donation, but shall not be authorized to acquire historic properties by condemnation.
- c. Preserve, restore, maintain and operate historic properties under the ownership or control of the commission.
- d. Lease, sell and otherwise transfer or dispose of historic properties subject to rights of public access and other covenants and in a manner that will preserve the property.
- e. Contract, with the approval of the local governing body, with the state or federal government, or any agency of either, or with any other organization.
- f. Cooperate with the federal, state and local governments in the pursuance of the objectives of historic preservation.
- g. Participate in the conduct of land use, urban renewal and other planning processes undertaken by the county or city.
- h. Recommend ordinances and otherwise provide information for the purposes of historic preservation to the county or city governing body.
- i. Promote and conduct an educational and interpretive program on historic properties within its jurisdiction.
- j. Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private property, building or structure without the express consent of the owner or occupant thereof.

History.

I.C., § 67-4604, as added by 1975, ch. 142, § 2, p. 324.

STATUTORY NOTES

Prior Laws.

Former § 67-4604 was repealed. See Prior Laws, § 67-4601.

Compiler's Notes.

The term “this act” in the introductory paragraph refers to S.L. 1975, Chapter 142, which is compiled as §§ 67-4601 to 67-4619.

§ 67-4605. Funding of operations. — (1) For the purpose of providing funds for a historic preservation commission the governing body of any city which has established such a commission may:

(a) Provide funds to the commission from current revenues; (b) Receive and expend moneys from any other sources; or (c) Use any combination of paragraphs (a) and (b) of this subsection.

(2) For the purpose of providing funds for a historic preservation commission the governing body of any county which has established such a commission may provide funds to the commission from current revenues in accordance with the provisions regarding county historical societies, as found in [section 31-864, Idaho Code](#).

(3) Any funds received by a historic preservation commission may be accumulated from year to year and need not be expended during any one (1) fiscal year, provided that the maximum accumulation of funds received from ad valorem taxes shall not exceed twice the amount of money authorized by the levy authorized by subsection (1) or (2) of this section.

History.

[I.C., § 67-4605](#), as added by 1975, ch. 142, § 2, p. 324.

STATUTORY NOTES

Prior Laws.

Former § 67-4605 was repealed. See Prior Laws, § 67-4601.

§ 67-4606. Acquisition of property. — (1) All lands, buildings, structures, sites or areas acquired by funds appropriated by a county or city shall be acquired in the name of the county or city unless otherwise provided by the governing board. So long as owned by the county or city, historic properties may be maintained by or under the supervision and control of the county or city. However, all lands, buildings or structures acquired by a historic preservation commission from funds other than those appropriated by a county or city may be acquired and held in the name of the historic preservation commission, the county or municipality, or both.

(2) Nothing in this chapter shall be construed to allow the designation, regulation, conditioning, restriction or acquisition of historic buildings, structures, sites or areas, or other properties or facilities owned by the state or any of its political subdivisions, agencies or instrumentalities.

History.

I.C., § 67-4606, as added by 1975, ch. 142, § 2, p. 324; am. 2001, ch. 259, § 1, p. 932.

STATUTORY NOTES

Prior Laws.

Former § 67-4606 was repealed. See Prior Laws, § 67-4601.

§ 67-4607. Historic districts. — A county or city may establish by ordinance one (1) or more historic districts within the area of its jurisdiction. No historic district or districts shall be designated until the following requirements are met:

a. The local historic preservation commission appointed by the governing body of the county or city shall make an investigation of the historical, architectural, archeological and cultural significance of the buildings, structures, features, sites or surroundings included in any such proposed historic district. The commission shall report its findings to the local planning board for their consideration and recommendation.

b. Sixty (60) days after such transmittal the commission shall hold a public hearing thereon after due notice, which shall include written notice, postage prepaid, to the owners of all properties to be included in such district.

c. The commission shall submit a final report with its recommendations and a draft of a proposed ordinance to the county or city governing body. Any such ordinance may, from time to time, be amended in the same manner.

d. Nothing in this chapter shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

History.

I.C., § 67-4607, as added by 1975, ch. 142, § 2, p. 324; am. 2001, ch. 259, § 2, p. 932.

§ 67-4608. Certificate of appropriateness. — Except as provided in section 67-4607 d., Idaho Code, after the designation of a historic district, no exterior portion of any building or other structure (including walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor aboveground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the historic preservation commission. The county or city shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required. For purposes of this chapter, “exterior features” shall include the architectural style, general design and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material and type and style of all windows, doors, light fixtures, signs, other appurtenant fixtures and natural features such as trees and shrubbery. In the case of outdoor advertising signs, “exterior features” shall be construed to mean the style, material, size and location of all such signs. The commission shall not consider interior arrangement and shall take no action under this section except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs or natural features in the historic district which would be incongruous with the historical, architectural, archeological or cultural aspects of the district.

History.

I.C., § 67-4608, as added by 1975, ch. 142, § 2, p. 324; am. 2001, ch. 259, § 3, p. 932.

STATUTORY NOTES

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Cited Idaho Historic Preservation Council, Inc. v. Boise City Council, 134 Idaho 651, 8 P.3d 646 (2000).

§ 67-4609. Change in use. — No change in the use of any structure of property within a designated historic district shall be permitted until after an application for a certificate of appropriateness has been submitted to and approved by the historic preservation commission. The county or city shall require such a certificate to be issued by the commission prior to the approval of any change of zoning classification within the historic district.

History.

I.C., § 67-4609, as added by 1975, ch. 142, § 2, p. 324.

§ 67-4610. Notice to owner — Appeal. — Prior to issuance or denial of a certificate of appropriateness the commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application. If the commission determines that the proposed construction, reconstruction, alteration, moving or demolition is appropriate, it shall forthwith approve such application and shall issue to the applicant a certificate of appropriateness. If the commission determines that a certificate of appropriateness should not be issued, it shall place upon its records the reasons for such determination and shall forthwith notify the applicant of such determination, furnishing him an attested copy of its reasons therefor and its recommendations, if any, as appearing in the records of said commission. The commission may approve such application in any case where the owner would suffer extreme hardship, unless the certificate of appropriateness were issued forthwith. Any applicant aggrieved by a determination of the commission may appeal to the appropriate governing body. An appeal from the appropriate governing body may be taken to the district court for the county in which the land concerned is situated.

History.

I.C., § 67-4610, as added by 1975, ch. 142, § 2, p. 324.

CASE NOTES

Due Process.

Members of the city council are free to take phone calls from concerned citizens and listen to their opinions and arguments prior to a quasi-judicial proceeding, but, in order to satisfy due process, the identity of the callers must be disclosed, as well as a general description of what each caller said. *Idaho Historic Preservation Council, Inc. v. Boise City Council*, 134 Idaho 651, 8 P.3d 646 (2000).

§ 67-4611. Ordinary repairs — Safety. — Nothing in this act shall be construed to prevent the ordinary maintenance or repair of any exterior feature in a historic district which does not involve a change in design, material, color or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition.

History.

I.C., § 67-4611, as added by 1975, ch. 142, § 2, p. 324.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1975, Chapter 142, which is compiled as §§ 67-4601 to 67-4619.

§ 67-4612. Special restrictions. — In addition to any power or authority of a county or city to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing body of any county or municipality is empowered to provide by ordinances, special conditions or restrictions for the protection, enhancement and preservation of historic properties; provided however, that nothing in this chapter shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

History.

I.C., § 67-4612, as added by 1975, ch. 142, § 2, p. 324; am. 2001, ch. 259, § 4, p. 932.

§ 67-4613. Historic easements. — Any county or city may acquire, by purchase, or donation, historic easements in any area within their respective jurisdictions wherever and to the extent that the governing body of the county or city determines that the acquisition will be in the public interest. For the purpose of this section, “historic easement” means any easement, restriction, covenant or condition running with the land, designated to preserve, maintain or enhance all or part of the existing state of places of historical, architectural, archeological or cultural significance.

History.

I.C., § 67-4613, as added by 1975, ch. 142, § 2, p. 324.

§ 67-4614. Designation as historic property. — The local governing body of any county or city may adopt an ordinance designating one (1) or more historic properties on the following criteria: historical, architectural, archeological and cultural significance; suitability for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such costs. In order for any historic property to be designated in the ordinance, it must in addition meet the criteria established for inclusion of the property in the national register of historic places. For each designated historic property, the ordinance shall require that the waiting period set forth in section 67-4615 [67-4616], Idaho Code, be observed prior to its demolition, material alteration, remodeling or removal. The ordinance shall also provide for a suitable sign or marker on or near the property indicating that the property has been so designated; provided however, that nothing in this chapter shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

History.

I.C., § 67-4614, as added by 1975, ch. 142, § 2, p. 324; am. 2001, ch. 259, § 5, p. 932.

STATUTORY NOTES

Compiler's Notes.

For more on the national register of historic places, referred to in the second sentence, see <https://www.nps.gov/subjects/nationalregister/index.htm>.

The bracketed insertion in the third sentence was added by the compiler to correct the statutory citation.

RESEARCH REFERENCES

Idaho Law Review. — Urban Resiliency and Destruction, Kellen Zale.
50 Idaho L. Rev. 85 (2014)

§ 67-4615. Procedure for designation. — No ordinance designating a historic property pursuant to section 67-4614, Idaho Code, may be adopted until the following procedural steps have been taken:

a. The local historic preservation commission shall make an investigation and report on the historical, architectural, archeological or cultural significance of the property in question.

b. The local governing body shall hold a public hearing on the proposed ordinance, after giving sufficient written notice to the owners and occupants of the property and posting public notice in its normal manner.

c. Following such public hearing, the local governing body may act on the ordinance.

d. Upon adoption of the ordinance, the owners and occupants of each designated historic property shall be given written notification of such designation by the local governing body. One (1) copy of the ordinance shall be filed by the local historic preservation commission in the office of the county recorder for the county in which the property is located.

e. The local historic preservation commission shall give notice of such designation to the tax assessor of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax assessor in appraising it for tax purposes.

History.

I.C., § 67-4615, as added by 1975, ch. 142, § 2, p. 324.

§ 67-4616. Change in use of historic property. — (1) A historic property designated by ordinance as herein provided may be demolished, materially altered, remodeled, relocated or put to a different use only after one hundred eighty (180) days' written notice of the owner's proposed action has been given to the local historic preservation commission. During this period, the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property. During this period, or at any time prior thereto following notice of designation to the owner as provided in section 67-4615 d., Idaho Code, and where such action is reasonably necessary or appropriate for the continued preservation of the property, the commission may enter into negotiations with the owner for the acquisition by gift, purchase, or exchange of the property or any interest therein. The commission may reduce the waiting period required by this section in any case where the owner would suffer extreme hardship, unless a reduction in the required period were allowed. The commission shall have the discretionary authority to waive all or any portion of the required waiting period, provided that the alteration, remodeling, relocation or change of use is undertaken subject to conditions agreed to by the commission insuring the continued maintenance of the historical, architectural, archeological or cultural integrity and character of the property.

(2) Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in or on a historic property that does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, demolition or removal of any such feature when a building inspector or similar official certifies to the commission that such action is required for the public safety because of an unsafe or dangerous condition.

(3) Nothing in this act shall authorize or be construed to allow the designation, regulation, conditioning or restriction by ordinance or other means of any property or facility owned by the state of Idaho.

History.

I.C., § 67-4616, as added by 1975, ch. 142, § 2, p. 324; am. 2001, ch. 259, § 6, p. 932.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in subsection (3) refers to S.L. 1975, Chapter 142, which is compiled as §§ 67-4601 to 67-4619.

§ 67-4617. Penalties. — The governing body of any county or city may enact an ordinance to prevent the deterioration by willful neglect of any designated historic property or any property within an established historic district. Any property owner violating an ordinance established pursuant to this section shall be guilty of a misdemeanor punishable by a fine not exceeding three hundred dollars (\$300). Each day that a violation continues to exist shall constitute a separate offense.

History.

I.C., § 67-4617, as added by 1975, ch. 142, § 2, p. 324.

§ 67-4618. Exemption from health or building codes. — The governing body of any county or city, in order to promote the preservation and restoration of historic properties within its jurisdiction, may exempt a historic property from the application of such standards contained in the county or city health or building codes, or both, as the governing body, upon recommendation of the local historic preservation commission, shall determine would otherwise prevent or seriously hinder the preservation or restoration of said historic property.

History.

I.C., § 67-4618, as added by 1975, ch. 142, § 2, p. 324.

§ 67-4619. Transfer of development rights. — Any county or city governing body may establish procedures authorizing owners of designated historic properties to transfer development rights in such amounts and subject to such conditions as the governing body shall determine. For the purposes of this section, “development rights” are the rights granted under applicable local law respecting the permissible bulk and size of improvements erected thereon.

History.

I.C., § 67-4619, as added by 1975, ch. 142, § 2, p. 324.

Chapter 47

DEPARTMENT OF COMMERCE

Sec.

67-4701. Department of commerce created.

67-4702. Authority and duties of the director.

67-4703. Powers and duties.

67-4703A. Foreign trade zones.

67-4704. Economic advisory council — Appointment of members — Qualifications.

67-4705. Idaho development and publicity account.

67-4706. Community affairs functions and responsibilities of the department.

67-4707. Funds of department.

67-4708. Business records.

67-4709. Reports by participating agencies. [Repealed.]

67-4710. Declaration of policy.

67-4711. Definitions.

67-4712. Idaho travel and convention industry council — Created — Appointment of members.

67-4713. Members' qualifications — Term of office — Conflict of interest.

67-4714. Meetings of the council.

67-4715. Duties and powers of the council.

67-4716. Administrative expenses — Limitation.

67-4717. Regional and statewide grant program.

67-4718. Assessment — Council account.

67-4719. Penalties.

67-4720. Tourist information signs.

67-4721. Purpose.

67-4722. Economic development financing account.

67-4723. Grants — Standards and administration.

67-4723A. Idaho small business federal funding assistance act — Fund created.

67-4724. Return to the state.

67-4725. Idaho global entrepreneurial mission grant fund.

67-4726. Idaho global entrepreneurial mission council — Appointment of members — Qualifications.

67-4727. Nursing workforce advisory council — Members — Officers — Compensation — Idaho nursing workforce center. [Null and void.]

67-4728. Film and television production business rebate fund. [Null and void.]

67-4729. Department of commerce and IGEM council rules and responsibilities.

67-4730. Idaho global entrepreneurial mission (IGEM) research.

67-4731. Commercialization revenue distribution.

67-4732. Idaho opportunity fund — Short title — Legislative intent.

67-4733. Director rulemaking authority.

67-4734. Idaho opportunity fund.

67-4735. Agreements required and disbursement of funds.

67-4736. Annual report by director.

67-4737. Idaho reimbursement incentive act — Short title — Legislative intent.

67-4738. Definitions.

67-4739. Application — Process — Agreements — Reimbursement.

67-4740. Agreement with applicant.

67-4741. Applicant's annual reporting procedure.

67-4742. Annual reporting by department.

67-4743. Suspension of Idaho reimbursement incentive act.

67-4744. Director rulemaking authority.

§ 67-4701. Department of commerce created. — There is hereby created in the executive branch of the government, a department of commerce, hereinafter referred to as the department, which shall have the duties, powers and authorities hereinafter provided.

Whenever in Idaho Code or elsewhere, reference is made to a predecessor department or agency of the department of commerce, other than the department of commerce and labor, it shall mean and hereafter be the department of commerce.

History.

1955, ch. 234, § 1, p. 521; am. 1974, ch. 22, § 3, p. 592; am. 1980, ch. 361, § 2, p. 937; am. 1985, ch. 160, § 4, p. 450; am. 2004, ch. 346, § 2, p. 1029; am. 2007, ch. 360, § 2, p. 1061.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, throughout the section, deleted “and labor” following “department of commerce”; and in the last paragraph, substituted “made to a predecessor department of agency of the department of commerce, other than the department of commerce and labor” for “made to the department of commerce or the department of labor, or their predecessor departments or agencies.”

§ 67-4702. Authority and duties of the director. — (1) The director of the department of commerce, hereafter the director, shall administer the provisions of this chapter and perform such other duties relating to commerce as may be imposed upon him by law. The director shall have the authority to employ individuals, make expenditures, require reports, make investigations, perform travel and take other actions deemed necessary. The director shall organize the department which shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government. The director shall have an official seal which shall be judicially noticed.

(2) The director shall have the authority pursuant to chapter 52, title 67, Idaho Code, to adopt, amend, or rescind rules as he deems necessary for the proper performance of all duties imposed upon him by law.

(3) Subject to the provisions of chapter 53, title 67, Idaho Code, the director is authorized and directed to provide for a merit system for the department covering all persons, except the director, the division administrators, and two (2) exempt positions to serve at the pleasure of the director.

(4) The director shall make recommendations for amendments to laws he is charged to implement as he deems proper.

(5) The director shall have all the powers and duties as may have been or could have been exercised by his predecessors in law, except those powers and duties granted and reserved to the director of the department of labor in titles 44, 45, 63 and 72, Idaho Code, and he shall be the successor in law to all contractual obligations entered into by his predecessors in law, except for those contracts of the department of labor, or contracts pertaining to any power or duty granted and reserved to the director of the department of labor in titles 44, 45, 63 and 72, Idaho Code.

(6) For the purposes of international trade, the director may use the title of secretary of the department.

History.

1947, ch. 269, § 33, p. 793; am. 1949, ch. 144, § 33, p. 252; am. 1951, ch. 104, § 7, p. 233; am. 1965, ch. 53, § 1, p. 86; am. 1974, ch. 16, § 3, p. 304; am. 1977, ch. 123, § 1, p. 262; am. 1987, ch. 312, § 1, p. 654; am. 1991, ch. 30, § 15, p. 58; am. 1996, ch. 421, § 2, p. 1406; am. 1998, ch. 1, § 43, p. 3; am. 1999, ch. 50, § 3, p. 112; am. and redessig. 2004, ch. 346, § 4, p. 1029; am. 2007, ch. 360, § 3, p. 1061; am. 2012, ch. 291, § 1, p. 805.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 72-1333.

Prior Laws.

Former section 67-4702, which comprised 1955, ch. 234, § 2, p. 521; am. 1974, ch. 22, § 4, p. 592; am. 1980, ch. 361, § 3, p. 937; am. 1985, ch. 160, § 5, p. 426, was repealed by S.L. 2004, ch. 346, § 3.

Amendments.

The 2007 amendment, by ch. 360, in subsection (1), in the first sentence, deleted “and labor” following “department of commerce,” “the employment security law, chapter 13, title 72, Idaho Code, the minimum wage law, chapter 15, title 44, Idaho Code, the provisions of chapter 6, title 45, Idaho Code, relating to claims for wages, the provisions of [section 44-1812, Idaho Code](#), relating to minimum medical and health standards for paid firefighters” following “provisions of this chapter,” and “labor and workforce development” following “commerce,” and deleted the former second sentence, which read: “The director shall be the successor in law to the office enumerated in [section 1, article XIII, of the constitution](#) of the state of Idaho”; in subsection (3), deleted “two (2) deputy directors” following “except the director,” and substituted “two (2)” for “five (5)”; in subsection (4), deleted “the employment security law and other” following “amendments to”; and added the two exception clauses in subsection (5).

The 2012 amendment, by ch 291, added subsection (6).

Effective Dates.

Section 2 of S.L. 1965, ch. 53 provided the act should become effective on and after the 1st day of July, 1965.

Section 4 of S.L. 1974, ch. 16 provided the act should become effective on and after July 1, 1974.

Section 2 of S.L. 1987, ch. 312 declared an emergency. Approved April 3, 1987.

Section 4 of S.L. 1999, ch. 50 declared an emergency. Approved March 11, 1999.

Section 2 of S.L. 2012, ch. 291 declared an emergency. Approved April 3, 2012.

§ 67-4703. Powers and duties. — The department of commerce shall have the power and it shall be its duty to engage in advertising the state of Idaho, its resources, both developed and undeveloped, its tourist resources and attractions, its agricultural, mining, lumbering and manufacturing resources, its health conditions and advantages, its scenic beauty and its other attractions and advantages; and in general either directly, indirectly or by contract do anything and take any action which will promote and advertise the resources and products of the state of Idaho, develop its resources and industries, promote tourist travel to and within the state of Idaho, and further the welfare and prosperity of its citizens.

The department shall also have the following duties when it deals with promoting economic development and tourism within the state:

(1) Survey and investigate the social, economic and physical resources of the state, including land, water, minerals, facilities for power, transportation, communications, recreation, health, education and other resources and facilities; endeavor to aid the legislature and the citizens of the state of Idaho in formulating a program for the development and utilization of these resources and facilities, and for balancing our agricultural, timber and mining economy with industrial capacity. It shall cooperate with local and regional agencies within the state. It shall cooperate with like agencies of other states, with agencies maintained by private persons or corporations, and with agencies established or employed by the United States to promote the development of the country and the welfare of its people.

(2) To develop and promote a comprehensive international marketing plan for Idaho's products.

(3) To collect and compile reliable data for general dissemination which will tend to the development of the state of Idaho by inducing people and capital to come within our borders.

(4) Keep accurate records and preserve all data collected by it, and from time to time prepare and submit to the governor and the legislature, reports, programs, recommendations and plans for the comprehensive, long-range

development, conservation and use of all the resources of the state of Idaho. It shall make such special investigations as to resources, facilities, and other matters as may be required by the governor or the legislature.

(5) Coordinate those activities of local, state, federal and private agencies and departments when they deal with the promotion of Idaho's economic resources.

(6) To require and receive from the various executive departments and public officials of the state of Idaho such information as may be required by the division [department] to enable it to fulfill its functions and carry out the purposes of this act.

(7) Administer and perform any other related functions or activities assigned by the governor or the legislature.

(8) Enter into interagency agreements with other state agencies in developing economic and community plans and programs.

(9) Provide technical assistance to other state agencies upon request.

(10) Contract with universities, consultants and other public and private agencies to develop plans and programs.

(11) Prepare a comprehensive economic development strategy.

(12) Petition for and receive moneys such as grants or gifts, to be used for state or local planning and economic development activities.

History.

1955, ch. 234, § 3, p. 521; am. 1974, ch. 22, § 5, p. 592; am. 1977, ch. 263, § 1, p. 770; am. 1980, ch. 361, § 4, p. 937; am. 1985, ch. 160, § 6, p. 426; am. 2004, ch. 346, § 5, p. 1029; am. 2007, ch. 360, § 4, p. 1061; am. 2011, ch. 99, § 1, p. 239.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 360, deleted “and labor” following “department of commerce” at the beginning of the first paragraph.

The 2011 amendment, by ch. 99, deleted former subsection (11), which read: “Serve as a clearinghouse for information, data, and other materials which may be used in developing Idaho’s economy” and deleted former subsection (13), which read: “Collect and compile reliable economic data for general dissemination”; and redesignated former subsections (12) and (14) as present subsections (11) and (12), respectively.

Compiler’s Notes.

The bracketed insertion in subsection (6) was added by the compiler. The reference to “the division,” added by S.L. 1974, ch. 22, § 5, meant the division of tourism and industrial development, the duties of which are now exercised by the department of commerce.

The term “this act” at the end of subsection (6) refers to S.L. 1955, Chapter 234, which is compiled as §§ 67-4701, 67-4703, 67-4704, and 67-4705. The reference probably should be to “this chapter,” being chapter 47, title 67, Idaho Code.

CASE NOTES

Beneficial Uses.

The preservation of aesthetic values and recreational opportunities for the citizens of the state provided for in this section constitute “beneficial uses” under Idaho Const., Art. XV, § 3. *State, Dep’t of Parks v. Idaho Dep’t of Water Admin.*, 96 Idaho 440, 530 P.2d 924 (1974).

§ 67-4703A. Foreign trade zones. — As applicable, the following may apply to the United States department of commerce, foreign trade zones board, for a grant of authority to establish, operate and maintain foreign trade zone(s) or subzones as provided in 19 U.S.C. 81a-81u (foreign trade zones act) within the state of Idaho:

(1) The director of the department of commerce or other designee of the governor, if the foreign trade zone is to be established, operated and maintained by the state or a corporation qualified under subsection (3) of this section; (2) The governing body of a municipality by ordinance, if the foreign trade zone is to be established, operated and maintained within its corporate boundaries; (3) Those officers of a corporation, incorporated in Idaho, who may be authorized by law or by the bylaws of the corporation, if they apply through the director of the department of commerce and in a manner consistent with the articles of incorporation.

History.

I.C., § 67-4703A, as added by 1991, ch. 241, § 1, p. 582.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1991, ch. 241 declared an emergency. Approved April 4, 1991.

§ 67-4704. Economic advisory council — Appointment of members — Qualifications. — There shall be an economic advisory council to advise the department in the preparation and execution of plans, projects and programs in the furtherance of the power and duties conferred by section 67-4703, Idaho Code. The director shall consult, confer and advise with the advisory council in connection with all decisions concerning the administration and development of such plans, projects and programs. The approval of the advisory council shall be a condition precedent to the undertaking of action in the implementation of such plans, projects and programs by the department. The advisory council shall consist of eight (8) persons, who shall be appointed by and serve at the pleasure of the governor, and who shall serve for three (3) year terms. They shall serve and shall be compensated as provided by section 59-509(n), Idaho Code. One (1) person shall be appointed to represent each of the seven (7) planning regions of the state, of which the appointee shall be a resident, and one (1) member shall serve in a statewide capacity. No more than five (5) members of the economic advisory council shall be from any one (1) political party.

History.

1955, ch. 234, § 4, p. 521; am. 1974, ch. 22, § 6, p. 592; am. 1980, ch. 247, § 85, p. 582; am. 1980, ch. 361, § 5, p. 937; am. 1985, ch. 160, § 7, p. 426; am. 2004, ch. 346, § 6, p. 1029; am. 2005, ch. 13, § 1, p. 39; am. 2013, ch. 102, § 1, p. 244; am. 2015, ch. 154, § 1, p. 544.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 102, inserted “and serve at the pleasure of” in the fourth sentence and rewrote the last sentence, which formerly read: “Membership shall be divided between political parties.”

The 2015 amendment, by ch. 154, substituted “eight (8) persons” for “seven (7) persons” in the fourth sentence; substituted “59-509(n), Idaho Code” for “59-509(b), Idaho Code” in the fifth sentence; substituted “seven (7) planning regions of the state, of which the appointee shall be a resident”

for “six (6) planning regions of the state” in the sixth sentence; and substituted “five (5) members” for “four (4) members” in the last sentence.

§ 67-4705. Idaho development and publicity account. — There is hereby established an Idaho development and publicity account in the state operating fund and all of the moneys now or hereafter in said account are hereby appropriated to the use of the department of commerce for the purposes expressed in this act. The department may accept contributions to said account from local units of government, and private persons or agencies. The account shall consist of such contributions and appropriations made thereto from time to time.

History.

1955, ch. 234, § 5, p. 521; am. 1974, ch. 22, § 7, p. 592; am. 1980, ch. 361, § 6, p. 937; am. 1985, ch. 160, § 8, p. 426.

STATUTORY NOTES

Compiler's Notes.

The term “this act” at the end of the first sentence refers to S.L. 1955, Chapter 234, which is compiled as §§ 67-4701, 67-4703, 67-4704, and 67-4705. The reference probably should be to “this chapter,” being chapter 47, title 67, Idaho Code.

Effective Dates.

Section 61 of S.L. 1974, ch. 22 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-4706. Community affairs functions and responsibilities of the department. — The department of commerce shall have the following community affairs functions and responsibilities:

(1) Administration or coordination of state programs and projects relating to community affairs planning. The programs and projects shall be consistent with local, regional and state comprehensive plans and policies.

(2) Upon request, cooperate with and provide technical and financial assistance to counties, cities, municipal corporations, governmental conferences or councils, regional planning commissions, parks or recreation boards, community development groups, community action agencies, Indian tribes and similar agencies created for the purposes of aiding and encouraging an orderly, productive and coordinated development of the state, and to strengthen local planning responsibility and capability.

History.

I.C., § 67-4706, as added by 1980, ch. 361, § 8, p. 937; am. 1985, ch. 160, § 9, p. 426.

STATUTORY NOTES

Prior Laws.

Former § 67-4706, which comprised S.L. 1955, ch. 234, § 7, p. 521, was repealed by S.L. 1980, ch. 361, § 7.

§ 67-4707. Funds of department. — When federal or other funds are received by the department, they shall be promptly transferred to the state treasurer and thereafter be expended only upon the approval of the director.

History.

I.C., § 67-4707, as added by 1980, ch. 361, § 9, p. 937; am. 1985, ch. 160, § 10, p. 426.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Prior Laws.

Former § 67-4707, which comprised S.L. 1963, ch. 50, § 2, p. 202; 1965, ch. 64, § 1, p. 99, was repealed by S.L. 1970, ch. 84, § 5. For present comparable law, see §§ 67-1910 to 67-1913.

§ 67-4708. Business records. — Business records and information submitted to the department by business clients shall be subject to disclosure according to chapter 1, title 74, Idaho Code. These records and information shall include financial statements, employment/employee records, loan agreements, the method of financing, the source and terms of financing, business and individual tax returns, insurance policies, bank statements, financial institution letters and documents, sales records, inventory lists, collateral agreements, and other documents or information the business declares to be, and marked “confidential — proprietary information.”

The exemption from disclosure as provided in chapter 1, title 74, Idaho Code, shall also be extended to and be consistent with the requirements for confidentiality for business information included in any application for the various federal grant, loan or loan guarantee programs, various federal procurement contracting programs, and other similar federal business assistance programs in which the department is a participant.

This exemption from disclosure shall also apply to business information and records associated with industrial revenue bonds, department efforts to assist businesses with international marketing, industrial relocation projects, and other business development projects in which the department extends assistance.

History.

I.C., § 67-4708, as added by 1986, ch. 104, § 1, p. 291; am. 1990, ch. 213, § 95, p. 480; am. 2004, ch. 346, § 7, p. 1029; am. 2015, ch. 141, § 173, p. 379.

STATUTORY NOTES

Prior Laws.

Former § 67-4708, which comprised § 67-4708 as added by 1980, ch. 361, § 10, p. 937, was repealed by S.L. 1982, ch. 288, § 1.

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” near the beginning of the first and second paragraphs.

Effective Dates.

Section 2 of S.L. 1986, ch. 104 declared an emergency. Approved March 22, 1986.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 67-4709. Reports by participating agencies. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised (I.C., § 67-4709, as added by 1980, ch. 361, § 11, p. 937) was repealed by S.L. 1982, ch. 288, § 1.

§ 67-4710. Declaration of policy. — Among the industries in the state of Idaho that contribute to the economic welfare of the state is the clean, nonpolluting travel industry. It is in the interest of this industry as well as the people that the abundant natural resources of Idaho be protected, responsibly managed and uniformly distributed. A strong travel and convention industry extends its economic benefits beyond its immediate providers to a wide spectrum of Idaho's population. Competition from neighboring states, however, has become so intense, that it is necessary that a stronger effort be made to encourage more visitors to come to Idaho. It is the purpose of this act to promote the public health and welfare of the citizens of this state by providing employment of labor, protection, promotion, study, research, analysis and development of Idaho's travel and convention industry.

History.

I.C., § 67-4710, as added by 1981, ch. 216, § 2, p. 398.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in the last sentence refers to S.L. 1981, Chapter 216, which is compiled as §§ 67-4710 to 67-4719. See § 67-4711(1).

§ 67-4711. Definitions. — As used in sections 67-4710 through 67-4719, Idaho Code, unless the context requires otherwise:

(1) “Act” means **sections 67-4710 through 67-4719, Idaho Code.**

(2) “Campground” means any privately owned business that rents areas or places used for camping or parking campers, travel trailers, motorhomes or tents.

(3) “Council” means the state of Idaho travel and convention industry council.

(4) “Department” means the department of commerce.

(5) “Hotel/motel” means an establishment that provides lodging to members of the public for a fee and shall include condominiums, townhouses or any other establishment that makes a sale as herein defined.

(6) “Planning regions” means those seven (7) districts designated by number and shall embrace the several counties as follows: No. 1. The counties of Benewah, Bonner, Boundary, Kootenai and Shoshone.

No. 2. The counties of Clearwater, Idaho, Latah, Lewis and Nez Perce.

No. 3. The counties of Adams, Canyon, Gem, Payette, Washington, Ada, Owyhee, Elmore, Boise and Valley.

No. 4. The counties of Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls.

No. 5. The counties of Bannock, Caribou, Bear Lake, Franklin, Oneida, Power and Bingham.

No. 6. The counties of Clark, Jefferson, Fremont, Madison, Teton and Bonneville.

No. 7. The counties of Blaine, Lemhi, Custer and Butte.

(7) “Sale” means the renting of a place to sleep to an individual by a hotel, motel, or campground for a period of less than thirty-one (31) continuous days. “Sale” shall not include the renting of a place to sleep to an individual by the Idaho Ronald McDonald House.

History.

I.C., § 67-4711, as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 11, p. 426; am. 1988, ch. 79, § 1, p. 137; am. 1988, ch. 174, § 1, p. 303; am. 1995, ch. 219, § 2, p. 762; am. 2005, ch. 13, § 2, p. 39; am. 2007, ch. 360, § 5, p. 1061; am. 2018, ch. 71, § 1, p. 165.

STATUTORY NOTES**Cross References.**

Idaho travel and convention industry council, § 67-4712.

Amendments.

The 2007 amendment, by ch. 360, deleted “and labor” following “department of commerce” in subsection (4).

The 2018 amendment, by ch. 71, in subsection (6), inserted “Camas” in No. 4. and deleted “Camas” following “Blaine” in No. 7.

Effective Dates.

Section 4 of S.L. 1995, ch. 219 declared an emergency. Approved March 20, 1995.

§ 67-4712. Idaho travel and convention industry council — Created — Appointment of members. — There is hereby created an advisory council to advise, as provided by this act, the department on matters related to the travel and convention industry. The council shall consist of eight (8) persons who shall be appointed by and serve at the pleasure of the governor. The term of office of members of the council shall be three (3) years commencing on January 1. An incumbent member whose term is scheduled to expire on July 1, 2012, shall serve until January 1, 2013.

History.

I.C., § 67-4712, as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 12, p. 426; am. 2005, ch. 13, § 3, p. 39; am. 2012, ch. 219, § 1, p. 600.

STATUTORY NOTES

Amendments.

The 2012 amendment by ch. 219, inserted “and serve at the pleasure of” in the second sentence, substituted “January 1” for “July 1” in the third sentence, and added the last sentence.

Compiler’s Notes.

The term “this act” in the first sentence refers to S.L. 1981, Chapter 216, which is compiled as §§ 67-4710 to 67-4719. See § 67-4711(1).

§ 67-4713. Members' qualifications — Term of office — Conflict of interest. — (1) Members of the council shall be individuals actively involved in the state's travel and convention industry as a career or as an investment. Their selection shall be made with regard to their ability and disposition to serve the state's interest and their knowledge of the state's travel industry. There shall be one (1) member appointed from each of the seven (7) planning regions of the state and one (1) member shall serve in a statewide capacity.

(2) Members of the council may not serve more than two (2) consecutive terms, nor may they hold or file for any partisan elective political office while a member of the council.

(3) A member of the council may be removed if he is no longer a resident of the district from which he was appointed. Should a vacancy occur on the council, the governor shall appoint a person from the proper region to fulfill the remaining term of the vacant position.

(4) Any member of the council who has a direct interest in any grant application or proposal being considered by the council shall disclose such interest and shall refrain from voting on the application or proposal.

History.

I.C., § 67-4713, as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 13, p. 426; am. 1985, ch. 220, § 1, p. 532; am. 1988, ch. 79, § 2, p. 137; am. 2012, ch. 219, § 2, p. 600.

STATUTORY NOTES

Amendments.

The 2012 amendment by ch. 219, inserted “consecutive” preceding “terms” in subsection (2) and deleted “for inefficiency, neglect of duty, and misconduct in office or” following “may be removed” in subsection (3).

Effective Dates.

Section 3 of S.L. 1988, ch. 79 declared an emergency. Approved March 22, 1988.

§ 67-4714. Meetings of the council. — The council shall meet at least once every three (3) months and at such other times as called by the chairman of the council or director of the department. The chairman or director may call special meetings of the council at any time or place. Each member of the council shall be compensated as provided by section 59-509(h), Idaho Code. Each member shall be entitled to one (1) vote and a majority of the members of the council shall constitute a quorum.

History.

I.C., § 67-4714, as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 14, p. 426.

§ 67-4715. Duties and powers of the council. — (1) Consistent with the general purposes of this chapter, the council shall advise the department upon the establishment of policies to be followed in the accomplishments of the purposes of this act.

(2) In the administration of this act, the council shall have the following duties, authorities and powers:

(a) To review and recommend acceptance or denial of local grant requests submitted by nonprofit groups or organizations, for uses consistent with the purposes of this act. Such power shall include the right to approve disbursement of the department moneys to such nonprofit groups under the grant program created by [section 67-4717, Idaho Code](#).

(b) To counsel and advise the department on matters concerning the promotion and marketing of Idaho tourism, including, but not limited to the following: (1) the type of promotion, (2) the media source of promotion, (3) market areas for promotion and (4) areas for travel and industry emphasis.

(c) To encourage and assist in the coordination of the activities of persons, firms, associations, corporations, civic groups and governmental agencies engaged in publicizing, developing and promoting the scenic attractions and tourist advantages of the state.

(d) To recommend such action as the council deems necessary and advisable in order to stabilize and promote the travel industry of the state so as to benefit the health and welfare of the public.

(e) To cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or by federal legislation, engaged in activities similar to the work of the council. The council may, through the department, enter into contracts and agreements with such organizations or agencies for carrying on a joint campaign of research, education and publicity.

(f) To adopt, rescind, modify and amend all necessary and proper orders, resolutions and regulations for the procedure and exercise of its powers and the performance of duties.

(g) To keep books, records and accounts of all its activities, which books, records and accounts shall be open to inspection and audit. Such books shall also be open to the public.

(h) To report annually its activities and expenditures to the economic advisory council created by [section 67-4704, Idaho Code](#).

History.

[I.C., § 67-4715](#), as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 15, p. 426; am. 2005, ch. 13, § 4, p. 39.

STATUTORY NOTES

Compiler's Notes.

For term “this act”, see § 67-4711(1).

§ 67-4716. Administrative expenses — Limitation. — Not more than ten percent (10%) of all funds made available by this act shall be used by the council or department for those administrative expenses necessarily incurred by the operation of this act.

History.

I.C., § 67-4716, as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 16, p. 426.

STATUTORY NOTES

Compiler's Notes.

For term “this act”, see § 67-4711(1).

§ 67-4717. Regional and statewide grant program. — There is hereby established within the state of Idaho a travel and convention industry grant program. Such program shall be administered jointly by the council and the department. The source of funding for the program shall be from the assessment imposed by section 67-4718, Idaho Code.

Fifty percent (50%) of all funds derived from this act less one-half (1/2) of the administrative costs, shall be returned to local nonprofit organizations having as their primary purpose the promotion of travel and conventions within a planning region, to expend for the promotion of travel and conventions within their area. Each planning region shall be awarded grants totaling an amount equal to the regional proportion of one-half (1/2) the total sum raised by the assessment imposed by [section 67-4718, Idaho Code](#). No allocations to a planning region shall lapse, but shall be continuously available for use for promotion purposes within the planning region.

The remaining fifty percent (50%) of all funds derived from this act, less one-half (1/2) of the administrative costs, shall be expended by the department for the promotion and development of statewide travel and convention programs. The department shall be counseled and advised in its creation and execution of such programs by the council as provided by [section 67-4712, Idaho Code](#).

History.

[I.C., § 67-4717](#), as added by 1981, ch. 216, § 2, p. 398; am. 1985, ch. 160, § 17, p. 426.

STATUTORY NOTES

Compiler's Notes.

For term “this act”, see § 67-4711(1).

§ 67-4718. Assessment — Council account. — (1) From and after January 1, 1985, there is hereby levied and imposed an assessment at the rate of two percent (2%) of the amount of a sale as defined in section 67-4711, Idaho Code. The receipts from the assessment levied by this section shall be paid to the state tax commission in like manner, and under the definitions, rules and regulations of said commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code. No assessment shall be collected where there is an original written agreement that the space is to be occupied by the same person pursuant to a lease or similar agreement for a period in excess of thirty (30) days.

(2) The council may, by duly adopted resolution, determine that a lesser amount of assessment shall be imposed and the department shall certify such lesser assessment rate to the state tax commission; the rate of assessment shall be that amount so certified. In the absence of such certification the rate of assessment shall be that rate set forth in subsection (1) of this section.

(3) The assessment set forth herein shall be collected by the state tax commission in the same manner as provided in chapter 36, title 63, Idaho Code, for the collection of sales and use tax, and shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the tax commission to be paid shall be paid through the state refund account and those moneys are continuously appropriated.

(b) An amount of money equal to the actual cost of the collection and administration of the tax imposed by the provisions of this section shall be retained by the commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost at the end of each fiscal year shall be distributed as provided in paragraph (c) of this subsection.

(c) All remaining moneys received pursuant to this chapter shall be distributed to the Idaho travel and convention account, established in the dedicated fund, and all such moneys are set aside and appropriated to the department to administer pursuant to the provisions of this chapter.

(4) The state tax commission, upon written request of the director of the department of commerce, will make available information identifying those paying the assessment, either individually or by category. Such information however, shall not show the amount paid, nor any liabilities or delinquencies of those who have the duty to collect and remit the assessment authorized in this section.

History.

I.C., § 67-4718, as added by 1981, ch. 216, § 2, p. 398; am. 1982, ch. 10, § 1, p. 15; am. 1984, ch. 126, § 1, p. 301; am. 1985, ch. 160, § 18, p. 426; am. 1986, ch. 73, § 19, p. 59; am. 1988, ch. 174, § 2, p. 303; am. 1994, ch. 91, § 1, p. 207.

STATUTORY NOTES

Cross References.

State refund account, § 63-3067.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101 et seq.

Effective Dates.

Section 2 of S.L. 1984, ch. 126 provided that the act should take effect January 1, 1985.

§ 67-4719. Penalties. — Any person who shall violate or aid in the violation of any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof be punished by a fine of not more than three hundred dollars (\$300) or imprisonment not to exceed ninety (90) days, or both.

History.

I.C., § 67-4719, as added by 1981, ch. 216, § 2, p. 398.

STATUTORY NOTES

Compiler's Notes.

For term “this act”, see § 67-4711(1).

Effective Dates.

Section 3 of S.L. 1981, ch. 216 declared an emergency. Approved April 6, 1981.

§ 67-4720. Tourist information signs. — (1) There shall be established a series of uniform tourist information signs to be erected and placed in the rights of way of the primary highway system and the interstate highway system within the state of Idaho. Notwithstanding the provisions of chapter 28, title 40, Idaho Code, the committee shall have the authority to design the uniform tourist information signs. Their placement shall be made in accordance with the provisions of this section, and the provisions of section 131, title 23, U.S.C.

(2) The tourist information signs shall be uniform in design and contain specific information regarding the location of a scenic attraction or historical site which is nationally or regionally known and of outstanding interest to the traveling public.

(3) In order to expedite the placement of the information signs, the committee shall, upon the effective date of this act, commence a study to designate which scenic attractions and historic sites to highlight with information signs, and to determine their design, the information they are to contain, and any follow-through direction signs or trailblazer signs. The study shall incorporate recommendations from each region's populace and shall seek the cooperation of city, county and special road or highway districts. The study required under this section shall be completed and all decisions regarding design, content, and placement shall be made, on or before June 30, 1986, with a preliminary report on the study being completed by December 15, 1985.

(4) Upon completion of the study, the committee shall work in cooperation with the Idaho transportation department to determine information sign design, designation and placement. The Idaho transportation department shall supply expertise, technical information, or any other assistance the committee may require, regarding the design, designation and placement and construction of the information signs.

(5) The information signs required under this section on the state highway system, shall be constructed, erected and maintained by the Idaho transportation department according to the design and placement plans agreed upon by the Idaho transportation department and the committee as

stated in subsection (4). Erection of the information signs shall be completed on or before July 1, 1990.

(6) All costs for the study required in this section, including the design and designation of information sign placement costs, shall be paid by the committee from monies in the Idaho travel and convention account created by [section 67-4718, Idaho Code](#).

(7) Costs for the construction, erection and maintenance of the information signs on the state transportation system shall be paid by the Idaho transportation department from existing funds appropriated for the construction, maintenance, repair and traffic supervision for the highways of this state. However, no sign will be constructed that will result in the loss or forfeiture of federal-aid highway funds. Any design used for this promotion cannot be used by other entities unless approved by the committee and the Idaho transportation department.

(8) As used in this section, the term “committee” shall refer to the Idaho travel and convention industry committee [travel and convention industry council] created by [section 67-4712, Idaho Code](#).

History.

[I.C., § 67-4720](#), as added by 1985, ch. 127, § 1, p. 310.

STATUTORY NOTES

Cross References.

Idaho transportation department, § 40-501 et seq.

Compiler’s Notes.

Chapter 28, title 40, Idaho Code, referred to in subsection (1), was repealed by S.L. 1985, ch. 253, § 1, effective July 1, 1985. For present comparable provisions, see § 40-1901 et seq.

The phrase “the effective date of this act” near the beginning of subsection (3) refers to the effective date of S.L. 1985, Chapter 127, which was effective March 21, 1985.

The bracketed insertion in subsection (8) was added by the compiler to correct the name of the referenced agency. See § 67-4712.

Effective Dates.

Section 2 of S.L. 1985, ch. 127 declared an emergency. Approved March 21, 1985.

§ 67-4721. Purpose. — (1) It is hereby declared that there exists in this state a need to promote sound economic development, to improve the economic health of the state, to promote employment, and to improve the tax base of the state by encouraging the formation of development finance sources that enhance the availability of capital for new, emerging, or expanding business enterprises. Public resources are not intended to replace existing capital markets, but they can be carefully targeted to fill gaps in capital availability. It is hereby declared that it is a valid public purpose to preserve and promote the safety, health and welfare of this state and its citizens by the exercise of the powers specified in this act to provide grant programs to development finance sources.

(2) It is hereby further declared that the foregoing are public purposes and uses for which public moneys may be expended or granted and that such activities are governmental functions and serve a public purpose when improving the economic well-being or otherwise benefiting the people of this state; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

History.

I.C., § 67-4721, as added by 1991, ch. 148, § 1, p. 356.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the last sentence in subsection (1) refers to S.L. 1991, Chapter 148, which is codified as §§ 67-4721 to 67-4723 and 67-4724.

§ 67-4722. Economic development financing account. — There is hereby established an economic development financing account in the state agency asset fund and all of the moneys in said account are hereby appropriated to the department of commerce to carry out the purposes of sections 67-4721 through 67-4724, Idaho Code. The account shall consist of such contributions, appropriations, and distributions as are made thereto and such interest as may be earned on the account less the investment administration fee provided in section 67-1210, Idaho Code.

History.

I.C., § 67-4722, as added by 1991, ch. 148, § 2, p. 356.

§ 67-4723. Grants — Standards and administration. — The department of commerce shall administer a program of grants prorated to private capital raised to establish financing programs for new, emerging, and expanding business enterprises. Grants shall only be made to business and industrial development corporations (BIDCOs) licensed and regulated pursuant to the provisions of chapter 27, title 26, Idaho Code. It is recognized that BIDCOs, in compliance with section 26-2716, Idaho Code, administer a program of professional consulting and financing of new, emerging and expanding business enterprises. Such financings may take the form of loans or equity participation or a combination thereof. BIDCOs must report annually to the legislature, in compliance with section 27-2707 [26-2707], Idaho Code, information on the impact of grants in promoting economic development in the state.

Requests for grant proposals shall require the applicant to describe in detail its experience and expertise, the professional manner in which it will identify, finance, and monitor new, emerging and expanding business enterprises, the criteria it will use to determine which enterprises should be financed to best further the purposes of [sections 67-4721 through 67-4724, Idaho Code](#), the administrative and overhead charges which will be made to administer the grant, and such other matters as required by the department of commerce.

The department of commerce shall administer this program in such a way as to avoid favoritism of any particular enterprise and to maximize the public purposes of [sections 67-4721 through 67-4724, Idaho Code](#), without regard to any incidental benefits which may accrue to private parties. In administering the program, the department of commerce shall emphasize job creation, improvement of the state's tax base, geographic diversity of financing, and avoidance of financing enterprises which could reasonably be financed by other means.

History.

[I.C., § 67-4723](#), as added by 1991, ch. 148, § 3, p. 356.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the last sentence in the first paragraph of this section was added by the compiler to correct the enacted statutory reference.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

§ 67-4723A. Idaho small business federal funding assistance act — Fund created. — (1) There is hereby created in the state treasury the Idaho small business assistance fund to which shall be credited all moneys that may be appropriated, apportioned, allocated, and paid back to the fund, including grants, federal moneys, donations, gifts, funds from any other source or otherwise provided by law. The moneys in the fund shall be used to reimburse Idaho small businesses for costs incurred in the process of developing and submitting federal grant proposals and to compete for awards. The Idaho department of commerce shall administer the fund.

(2) As used in this section:

(a) “Federal funding” means grants available to for-profit businesses as awarded by federal agencies through small business innovative research grants, small business technology transfer research grants, broad area announcements or other grant programs.

(b) “Small business” means an Idaho for-profit company with five hundred (500) or fewer employees.

(c) “State grants” means a grant award of up to four thousand dollars (\$4,000) limited exclusively to the reimbursement of claimable expenses incurred by an Idaho small business pursuant to the process of competing for federal funding awards.

(3) The department of commerce shall administer a program of state grants to assist and incentivize new, emerging, and expanding Idaho small, for-profit businesses in the development of federal funding proposals that lead to the development of commercial products or services.

(4) The department of commerce shall administer this program in such a way as to avoid favoritism of any particular enterprise and to maximize the public purposes of increasing the number of submitted proposals from Idaho small businesses and increasing the number of grant awards to these businesses. Particular attention shall be paid to the encouragement of companies that have not competed for federal funding awards in the past.

History.

I.C., § 67-4723A, as added by 2011, ch. 224, § 2, p. 611.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2011, ch. 224 provided: “Legislative Intent — Short Title. The Legislature intends that an incentive for Idaho companies to commit private resources toward the process of attracting federal grants shall be provided through state grants that reimburse up to four thousand dollars. Small businesses that are reimbursed for expenses to submit a grant proposal which results in winning a small federal grant award will agree to reimburse the state grant fund, and thereby help replenish the fund. Companies which win federal awards in excess of two hundred fifty thousand dollars will agree to reimburse the fund for up to five times the amount of their state grant. This act shall be known and may be cited as the ‘Idaho Small Business Federal Funding Assistance Act’.”

§ 67-4724. Return to the state. — It is hereby recognized that the principal return to the state shall be in the form of increased tax revenues and increased job growth. A further return to the state is hereby provided as follows. Grants shall require the applicant to retain within its financing program all funds representing a return on principal until initial capitalization is doubled. Upon doubling capitalization and upon the approval of the department of finance, grantees shall distribute up to fifty per cent (50%) of profits on a pro rata basis to the state of Idaho. Any additional returns shall be governed by the terms of the grant.

In the event of dissolution of a grantee, distribution shall be made to the state and stockholders on a pro rata basis. The director of the department of commerce shall preside over liquidation proceedings in accordance with chapter 27, title 26, Idaho Code.

History.

I.C., § 67-4724, as added by 1991, ch. 148, § 4, p. 356.

STATUTORY NOTES

Cross References.

Department of finance, § 67-2701 et seq.

§ 67-4725. Idaho global entrepreneurial mission grant fund. — There is hereby created in the state treasury the Idaho global entrepreneurial mission grant fund hereafter known as the IGEM grant fund. Moneys in the fund shall consist of funds received from state appropriated general funds, commercialization revenues from state IGEM projects, grants, federal moneys, donations or funds from any other source. Moneys in the fund may be expended pursuant to appropriation. The fund balance in the fund may be appropriated annually to the department of commerce for the purpose of supporting the IGEM grants. The treasurer shall invest all idle moneys in the fund. Any interest earned on the investment of idle moneys shall be returned to the fund.

History.

I.C., § 67-4725, as added by 2005, ch. 102, § 3, p. 321; am. 2009, ch. 162, § 2, p. 487; am. 2012, ch. 60, § 1, p. 160; am. 2016, ch. 84, § 1, p. 266.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Amendments.

The 2009 amendment, by ch. 162, rewrote the section catchline, which formerly read: “Office of science and technology fund”; in the first sentence, substituted “Idaho innovation fund” for “office of science and technology fund”; and, in the third sentence, substituted “department of commerce, commercial innovation division” for “office of science and technology.”

The 2012 amendment, by ch. 60, substituted “global entrepreneurial mission grant fund” for “innovation fund” in the section heading and in the first sentence; added “hereafter known as the IGEM grant fund” in the first sentence; inserted “state appropriated general fund, commercialization revenues from state IGREM projects” in the second sentence; and

substituted “for the purpose of supporting the IGEM grants” for “commercial innovation division” in the fourth sentence.

The 2016 amendment, by ch. 84, substituted “received from” for “received pursuant to [section 49-416C, Idaho Code](#)” in the second sentence.

Effective Dates.

Section 4 of S.L. 2005, ch. 102 provided that the act should take effect on after January 1, 2006.

§ 67-4726. Idaho global entrepreneurial mission council — Appointment of members — Qualifications. — (1) The state of Idaho recognizes that the health and expansion of Idaho's future economy will depend upon taking full advantage of research and technology, and that Idaho has impressive resources for innovation-based growth, internationally recognized university research programs, globally competitive innovation companies and the Idaho national laboratory.

The IGEM council is hereby created to advise the department of commerce, the state board of education, state colleges and universities, and other state, local, federal and private sector agencies and organizations on innovation interests and potentials; to support the development and publishing of information on the condition and importance of innovation to the state's economy; to assist with the development and implementation of a state strategic plan for innovation; and to assist with the coordination of local, state and federal interests to increase the positive economic impact of the state's innovation resources.

(2) The council shall be appointed by and serve at the pleasure of the governor. Membership of the council shall include individuals knowledgeable and experienced in innovation issues. The council shall include: four (4) representatives from the private sector who have expertise in the transfer and commercialization of technology, the director of the department of commerce, one (1) member of the state board of education, one (1) representative from the Idaho national laboratory or the center for advanced energy studies, and one (1) representative each from Boise state university, Idaho state university, and the university of Idaho. The president pro tempore of the senate and the speaker of the house of representatives, or their designees, shall serve as members of the council. The governor shall designate a chairman from the council's private sector membership (unless otherwise specified at the governor's discretion) and the council shall designate such other officers from its membership as it deems necessary.

(3) The chairman, the director of the department of commerce and the state board of education member of the council shall serve as the executive committee of the council.

(4) The council may establish subcommittees with up to nine (9) members comprised of both council and non-council members to provide strategic direction to the council, to research policy issues or to advise the council on funding decisions. Recommendations by the subcommittees are subject to final approval by the council.

(5) The council shall be staffed and supported by the department of commerce. Members of the council, or any subcommittee, who are not state employees shall be compensated for actual and necessary expenses as provided by [section 59-509\(b\), Idaho Code](#).

History.

[I.C., § 67-4726](#), as added by 2006, ch. 14, § 1, p. 34; am. 2007, ch. 360, § 6, p. 1061; am. 2009, ch. 162, § 3, p. 487; am. 2012, ch. 60, § 2, p. 160; am. 2016, ch. 84, § 2, p. 266; am. 2017, ch. 112, § 1, p. 263.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.

Amendments.

The 2007 amendment, by ch. 360, deleted “and labor” following “department of commerce” throughout the section.

The 2009 amendment, by ch. 162, in the section catchline and in the first sentence in the second paragraph in subsection (1), substituted “Idaho innovation council” for “Science and technology advisory council”; throughout subsections (1) and (2), substituted “innovation” for “science and technology”; in the first paragraph in subsection (1), substituted “innovation-based” for “technology-based”; and, in subsection (2), deleted “science and” preceding “technology” in the second sentence, inserted “private-sector” in the third sentence, deleted “office of the” preceding “state board of education” in the fourth sentence, and added “commercial innovation division” in the fifth sentence.

The 2012 amendment, by ch. 60, substituted “global entrepreneurial mission council” for “innovation council” in the section heading;

substituted “IGEM council” for “Idaho innovation council” near the beginning of the second paragraph; and rewrote subsection (2).

The 2016 amendment, by ch. 84, inserted “(unless otherwise specified at the governor’s discretion)” in the fourth sentence of subsection (2).

The 2017 amendment, by ch. 112, designated some of the existing provisions of subsection (2) as present subsections (3) and (5) and added subsection (4).

Compiler’s Notes.

For further information on Idaho national laboratory, referred to in subsections (1) and (2), see <https://inl.gov>.

For further information on the center for advanced energy studies, referred to in subsection (2), see <https://inl.gov/about-inl/caes>.

§ 67-4727. Nursing workforce advisory council — Members — Officers — Compensation — Idaho nursing workforce center. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2007, ch. 221 provided “The provisions of Section 1 of this act shall be null, void and of no force and effect on and after July 1, 2009.”

This section was comprised of § 67-4727, as added by 2007, ch. 221, § 1, p. 663; am. 2008, ch. 27, § 18, p. 57.

§ 67-4728. Film and television production business rebate fund. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2008, ch. 350, as amended by S.L. 2014, ch. 189, § 1 provided: “The provisions of this act shall be null, void and of no force and effect on and after July 1, 2020. On July 1, 2020, or as soon thereafter as is practicable, the State Controller is hereby directed to transfer any unexpended or unobligated moneys remaining in the fund to the General Fund.”

This section was comprised of § 67-4728, as added by 2008, ch. 350, § 1, p. 965; am. 2010, ch. 119, § 1, p. 265.

§ 67-4729. Department of commerce and IGEM council rules and responsibilities. — (1) The department of commerce in conjunction with the IGEM council shall:

- (a) Ensure that IGEM funds appropriated to the department of commerce and received for research and development at the universities and for the technology outreach program are used appropriately, effectively and efficiently in accordance with the intent of the legislature;
- (b) In conjunction with the IGEM research institutions and the private sector, evaluate best practices utilized by successful technology transfer programs and make recommendations to the IGEM research institutions for transaction and legal structures that incorporate those best practices;
- (c) Enhance technology transfer and commercialization of research and technologies developed at the universities to create high-quality jobs and new industries in the private sector in Idaho;
- (d) In conjunction with the university research departments and the private sector, develop a standardized process for the transfer of intellectual property from all IGEM-funded research projects and for the IGEM grant awards;
- (e) Establish economic development objectives for each IGEM state-funded project;
- (f) Establish rules for the IGEM grant program, including weighted consideration for Idaho-based industry partners and a matching requirement, monetary or otherwise, for recipients of the awards;
- (g) Verify that the IGEM project is being enhanced by research grants and that it is meeting the economic development objectives of the department of commerce and the IGEM council;
- (h) Monitor all research plans that are part of the project at the research universities to determine that appropriations are being spent in accordance with legislative intent and to measure the benefit and return to the state;

(i) Develop methods and incentives to encourage investment in and contributions to the IGEM project from the private sector; and

(j) Annually report and make recommendations to:

(i) The governor;

(ii) The joint finance-appropriations committee;

(iii) The house and senate commerce and human resource committees;
and

(iv) The office of the state board of education.

(2) The department of commerce and the Idaho global entrepreneurial mission council may:

(a) In addition to moneys received by it from the legislature, receive contributions from any source in the form of money, property, labor or other things of value for the project;

(b) Subject to any restrictions imposed by the donation, appropriations or bond authorizations, allocate moneys received by it among the universities, the technology outreach program and technology transfer offices to support commercialization and technology transfer to the private sector; or

(c) Enter into agreements necessary to obtain private investment in the project.

History.

I.C., § 67-4729, as added by 2012, ch. 60, § 3, p. 160; am. 2016, ch. 84, § 3, p. 266.

STATUTORY NOTES

Cross References.

Idaho global entrepreneurial mission council (IGEM), § 67-4726.

State board of education, § 33-101 et seq.

Amendments.

The 2016 amendment, by ch. 84, substituted “Idaho-based industry partners” for “Idaho based entities” in paragraph (1)(f) and deleted “equity” following “private” in paragraph (2)(c).

§ 67-4730. Idaho global entrepreneurial mission (IGEM) research. — As funding becomes available from the legislature or other sources, and subject to any restrictions or directions established by the legislature, the state board of education and/or the department of commerce may allocate moneys to Boise state university, the university of Idaho, and Idaho state university to provide funding for research teams or individual university research faculty to conduct IGEM-project designated research.

History.

I.C., § 67-4730, as added by 2012, ch. 60, § 4, p. 160; am. 2016, ch. 84, § 4, p. 266.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.

Amendments.

The 2016 amendment, by ch. 84, made a minor punctuation change.

§ 67-4731. Commercialization revenue distribution. — Commercialization revenue shall be limited to revenue generated through the commercialization of university intellectual property rights in a work authored or an invention conceived or first reduced to practice in the performance of an IGEM grant award. For commercialization revenue generated through the IGEM university research initiative and by IGEM-funded research faculty, the following is the priority of revenue distribution:

(1) The revenue shall first reimburse direct project costs associated with commercialization expenses generated by any of the three (3) universities.

(2) University faculty, staff or students engaged in the performance of an IGEM grant award shall receive a portion of the commercialization revenue, consistent with the university intellectual property policies applicable to such faculty, staff or student.

(3) Remaining funds shall be distributed according to the following priorities: (a) Twenty-five percent (25%) of the total remaining revenues shall reimburse the general fund until IGEM grant funds paid for the IGEM project are reimbursed.

(b) Five percent (5%) of the remaining revenues shall be deposited into the IGEM grant fund as defined in [section 67-4725, Idaho Code](#), to support future IGEM grants.

(c) The remaining funds shall be distributed to Boise state university, the university of Idaho, and Idaho state university, with the moneys distributed based on the participation of the universities in the research project that generated the commercialization revenue.

History.

[I.C., § 67-4731](#), as added by 2012, ch. 60, § 5, p. 160; am. 2016, ch. 84, § 5, p. 266.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

IGEM grant fund, § 67-4725.

Amendments.

The 2016 amendment, by ch. 84, rewrote the section to the extent that a detailed comparison would be impracticable.

§ 67-4732. Idaho opportunity fund — Short title — Legislative intent. — Sections 67-4732 through 67-4736, Idaho Code, shall be known and may be cited as the “Idaho Opportunity Fund Act” and also known as “this act.” The intent of the Idaho opportunity fund is to promote economic development and provide financial assistance, through the Idaho department of commerce, to retain, expand or attract quality jobs in industries deemed vital to the health of the local and statewide economy.

History.

I.C., § 67-4732, as added by 2013, ch. 106, § 1, p. 249.

§ 67-4733. Director rulemaking authority. — The director shall promulgate rules pursuant to chapter 52, title 67, Idaho Code, in the furtherance of the objectives of this act.

History.

I.C., § 67-4733, as added by 2013, ch. 106, § 1, p. 249.

STATUTORY NOTES

Compiler's Notes.

For meaning of “this act,” see § 67-4732.

§ 67-4734. Idaho opportunity fund. — There is hereby created in the state treasury the Idaho opportunity fund. Moneys in the Idaho opportunity fund may be expended by the Idaho department of commerce, pursuant to the provisions of this act, to assist in securing commitments for the retention and expansion of existing businesses and recruitment of new businesses.

(1) Moneys deposited in the fund. The following amounts shall be deposited in the fund:

- (a) Any amounts appropriated by the legislature for the fund for purposes described by this section;
- (b) Repayment of any moneys originally distributed from the fund that were improperly disbursed pursuant to the company performance agreement or the local government grant agreement; and
- (c) Gifts, grants and other donations received for the fund.

(2) Use of funds. Moneys in the Idaho opportunity fund may be allocated to local governments for any lawful purpose consistent with the intent of this act, which purposes shall include:

- (a) Construction of or improvements to new or existing water, sewer, gas or electric utility systems for new or existing buildings to be used for industrial or commercial operations;
- (b) Flood zone or environmental hazard mitigation; and
- (c) Construction, upgrade or renovation of other infrastructure related items including, but not limited to, railroads, broadband, parking lots, roads or other public costs that are directly related to specific job creation or expansion projects.

History.

I.C., § 67-4734, as added by 2013, ch. 106, § 1, p. 249.

STATUTORY NOTES

Compiler's Notes.

For meaning of “this act,” see § 67-4732.

§ 67-4735. Agreements required and disbursement of funds. — (1) Funds may be disbursed from the Idaho opportunity fund only in accordance with this act and rules adopted by the department, and only in accordance with agreements entered into between the department and one (1) or more local governments, and agreements between the local government and a grantee business as set forth herein.

(2) Company performance agreements. An agreement between a local government and a grantee business, in addition to any requirements in rules adopted by the department, may contain the following provisions:

- (a) A commitment to create or retain a specified number of jobs within a specified salary range at a specific location;
- (b) A commitment regarding the time period in which the jobs will be created or retained and the minimum time period for which the jobs must be maintained;
- (c) A commitment to complete the construction related to the agreed upon capital expenditures;
- (d) A provision that a reasonable percentage of the total amount of the grant be withheld until specified performance targets are met;
- (e) A provision that a reasonable percentage of the total amount of the grant be withheld until the specified number of jobs are maintained for a specified period of time;
- (f) A commitment to provide proof satisfactory to the local government and the director of new jobs created or existing jobs retained and the salary level of those jobs;
- (g) A provision that funds received under the agreement may be used only for a purpose as authorized by this act;
- (h) A provision allowing the director or the local government to inspect all records of the business that may be used to confirm compliance with the agreement or with the requirements of this act;

- (i) A provision establishing the method for determining compliance with the agreement;
- (j) A provision establishing a schedule for disbursement of funds under the agreement that allows disbursement of funds only in proportion to the amount of performance completed under the agreement;
- (k) A provision requiring repayment of grant funds and corresponding terms for repayment, if applicable, in the event a business subsequently fails to comply with the terms of the agreement;
- (l) A provision that any repayments of grant funds required if the performance targets are not achieved may be prorated to reflect a partial attainment of job creation or other performance targets; and
- (m) Any other lawful provision the director or the local government finds necessary to ensure the proper use of state or local funds.

(3) Local government grant agreement. An agreement between the department and one (1) or more local governments shall contain the following provisions:

- (a) A commitment on the part of the local government to match, in whole or in part, the funds allocated by the department. A local match may include, but shall not be limited to, money, fee waivers, in-kind services, donation of assets, the provision of infrastructure or a combination thereof. The director of the department of commerce shall have the authority to waive the local match requirement;
- (b) A provision requiring the local government to recapture any funds to which the local government is entitled under the company performance agreement;
- (c) A provision requiring repayment from the local government to the department for any funds used for unapproved purposes or disbursed prior to compliance with the company performance agreement or achievement of the job creation or other performance targets;
- (d) A provision allowing the department access to all records possessed by the local government necessary to ensure compliance with the company performance agreement and with the requirements of this act;

(e) A provision establishing a schedule for the disbursement of funds from the Idaho opportunity fund to the local government that reflects the disbursement schedule established in the company performance agreement; and

(f) Any other lawful provision the department deems necessary to ensure the proper use of state funds.

(4) Disbursement of funds. Funds may be disbursed from the Idaho opportunity fund to the local government only after the local government has demonstrated that the business has complied with the negotiated terms of the company performance agreement. The department shall disburse funds allocated under the Idaho opportunity fund to a local government in accordance with the disbursement schedule established in the local government grant agreement.

History.

I.C., § 67-4735, as added by 2013, ch. 106, § 1, p. 249.

STATUTORY NOTES

Compiler's Notes.

For meaning of "this act," see § 67-4732.

§ 67-4736. Annual report by director. — The director of the department of commerce shall annually publish a report regarding the state of the Idaho opportunity fund and cause the same to be made available to the public. The report shall contain information on the commitment of funds, disbursement and use of funds, the number of jobs committed and created, the total capital expenditures resulting from grant funds and the median wage of total jobs created as result of grant funds distributed in the prior year. The report is due no later than the last day of September each year. The director shall also provide such report to the governor and the joint finance-appropriations committee during each regular session of the Idaho state legislature. In addition, the director of the department of commerce shall provide reports on the grant activity and performance to the economic advisory council on a quarterly basis during the year.

History.

I.C., § 67-4736, as added by 2013, ch. 106, § 1, p. 249.

STATUTORY NOTES

Cross References.

Economic advisory council, § 67-4704.

§ 67-4737. Idaho reimbursement incentive act — Short title — Legislative intent. — Sections 67-4737 through 67-4744, Idaho Code, shall be known and may be cited as the “Idaho Reimbursement Incentive Act.” The Idaho legislature finds that in order to compete more effectively in a national and global marketplace for economic expansion, business retention and job creation, a number of states, including Idaho, have deemed it necessary to create economic-based incentives for the creation of quality jobs. Further, the Idaho legislature desires to create the Idaho reimbursement incentive act to be a performance-based tax reimbursement mechanism available to existing Idaho businesses and new businesses creating jobs in Idaho when the same are in good standing in the state of Idaho.

History.

I.C., § 67-4737, as added by 2014, ch. 336, § 1, p. 828.

§ 67-4738. Definitions. — As used in sections 67-4737 through 67-4744, Idaho Code:

(1) “Applicant” means a business entity that intends to create new jobs and submits an application for reimbursement to the department in accordance with this act.

(2) “Application” means a form approved by the director of the department containing all information required by the provisions of this act.

(3) “Approved percentage” means the amount of new state revenue the applicant is entitled to receive in the form of a tax credit over the term of the project. The approved percentage shall not exceed thirty percent (30%) of the new state revenue over the term of the project subject to the criteria as established by rules.

(4) “Business entity” means a single business, a separate division, branch or identifiable segment, or a group of businesses related through ownership pursuant to [section 267 of the Internal Revenue Code](#). For the purpose of this subsection, a “separate division, branch, or identifiable segment” shall be deemed to exist if, prior to the date of application, the income and expense attributable to such “separate division, branch, or identifiable segment” could be separately ascertained from the books of accounts and records.

(5) “Community match” means a commitment by the local government that demonstrates its active support of the applicant creating new jobs in its jurisdiction. Such match may include, but shall not be limited to, a contribution of money, fee waivers, in-kind services, the provision of infrastructure or a combination thereof. Such match shall also include a letter of commitment by the governing elected officials of the jurisdiction detailing the local government’s support that shall be included as part of an application.

(6) “Council” means the economic advisory council created pursuant to chapter 47, title 67, Idaho Code.

(7) “Department” means the Idaho department of commerce.

(8) “Director” means the director of the Idaho department of commerce.

(9) “Full-time job” means a job in which an individual is employed by the applicant and performs such duties at least thirty (30) hours per week.

(10) “Meaningful project” means an expansion of an existing business located in Idaho or the creation of new business operations in Idaho that generate the minimum required new jobs and otherwise qualify under the provisions of this act.

(11) “Minimum new jobs” means new jobs created by the applicant that shall be not less than twenty (20) such jobs over the term of the project if created within a rural community, or not less than fifty (50) such jobs over the term of the project if created within an urban community. An applicant will not be eligible for tax credit during the term of the project until the minimum new jobs have been added.

(12) “New jobs” means new jobs created in Idaho in accordance with this act that are nonseasonal, full-time jobs that collectively pay an average annual wage that equals or exceeds the average annual county wage of the county with jurisdiction over the local government providing the applicant’s community match. For purposes of this act, a job that shifts from one (1) location within the state of Idaho to another location shall not be considered a new job. New jobs must exceed the applicant’s maximum number of full-time jobs in Idaho during the twelve (12) months immediately preceding the date of application.

(13) “New state revenue” means the Idaho portion of state corporate income tax or franchise tax, personal income tax and sales and use tax that is paid by the applicant in excess of those taxes paid at the date of application and is attributable only to the new growth upon which the application is based. New state revenue does not include taxes paid during the term that is attributable to those operations that existed prior to the application and does not include taxes that are reimbursable by the federal government or any subdivision thereof. New state revenue shall include:

(a) Incremental new state sales and use tax revenues as governed by chapter 36, title 63, Idaho Code, that have been paid by the applicant on their own purchases as a result of a meaningful project;

(b) Incremental new state income tax or franchise tax, including income or franchise tax generated by corporations, pass-through entities, as defined in [section 63-3006C, Idaho Code](#), or proprietorships, pursuant to chapter 30, title 63, Idaho Code, that have been paid by an applicant as a result of a meaningful project;

(c) Incremental new state personal income taxes, as governed by chapter 30, title 63, Idaho Code, withheld on behalf of the applicant's employees, resulting from new jobs in a meaningful project, as evidenced by payroll withholding records indicating the amount of employee income taxes withheld and transmitted to the tax commission. Incremental new state personal income taxes shall not exceed the maximum allowable percentage of gross wages paid during a corresponding period that shall be the lesser of seven percent (7%) or the highest incremental state income tax rate.

(14) "Rural community" means, at the time of application, a city with a population of less than twenty-five thousand (25,000) persons or an unincorporated area within a county.

(15) "Tax commission" means the Idaho state tax commission.

(16) "Tax credit" means a refundable tax credit authorized by the director of the department. The tax commission shall make a refund to an applicant that is granted a tax credit under this section if the amount of the tax credit exceeds the applicant's tax liability for a taxable year. The credit may be used as a credit against the income or franchise tax contained in chapter 30, title 63, Idaho Code.

(17) "Tax credit amount" means the amount the department authorizes as a tax credit for a taxable year.

(18) "Term of project" or "term" means the number of years an applicant is authorized to receive a tax credit under this act that shall not exceed fifteen (15) years subject to the criteria as established by rules.

(19) "Urban community" means, at the time of application, a city with a population of at least twenty-five thousand (25,000), provided however, that a city of less than twenty-five thousand (25,000) that is adjoining an urban community shall be considered urban.

History.

I.C., § 67-4738, as added by 2014, ch. 336, § 1, p. 828; am. 2015, ch. 200, § 1, p. 609; am. 2017, ch. 149, § 1, p. 368.

STATUTORY NOTES

Cross References.

Department of commerce, § 67-4701 et seq.

Economic advisory council, § 67-4704.

State tax commission, Idaho Const., Art. VII, § 12 and § 63-101 et seq.

Amendments.

The 2015 amendment, by ch. 200, substituted “collectively pay an average annual wage that equals or exceeds the average annual county wage of the county with jurisdiction over the local government providing the applicant’s community match” for “pay annual wages that equal or exceed the average annual county wage where the jobs will be created” at the end of the first sentence in subsection (12).

The 2017 amendment, by ch. 149, in subsection (13), inserted “or franchise tax” three times, and added “and does not include taxes that are reimbursable by the federal government or any subdivision thereof” at the end of the second sentence of the introductory paragraph.

Federal References.

Section 267 of the Internal Revenue Code, referred to in subsection (4), is codified as 26 U.S.C.S. § 267.

Compiler’s Notes.

The term “this act” throughout this section refers to S.L. 2014, Chapter 336, which is compiled as §§ 67-4737 to 67-4744.

§ 67-4739. Application — Process — Agreements — Reimbursement.

— (1) A business entity may claim a refundable tax credit for creating a minimum number of new jobs in the state of Idaho. In order to be considered for participation, an applicant or its designated representative must submit an application to the director and shall include:

- (a) A complete description of the proposed project and the economic benefit that will accrue to the state as a result of the project;
- (b) A description or explanation of whether the project will occur or how it will be altered if the tax credit application is denied by the council;
- (c) Proof of a community match;
- (d) A letter from the tax commission confirming that the applicant is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission;
- (e) A detailed statement with an estimate of Idaho goods and services to be consumed or purchased by the applicant during the term;
- (f) Known or expected detriments to the state or existing industries in the state;
- (g) An anticipated project inception date and proposed schedule of progress;
- (h) Proposed performance requirements and measurements that must be met prior to issuance of the tax credit;
- (i) A detailed description of the proposed capital investment;
- (j) A detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected average wage to be paid for such jobs;
- (k) A detailed description of the estimated new state tax revenues to be generated by the project;
- (l) Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or 63-

4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to chapter 36, title 63, Idaho Code; and

(m) The federal employer identification or social security number for each individual or entity stated as the business entity in the agreement.

(2) Upon satisfaction by the director that all requirements are met pursuant to this chapter, the director shall submit such application to the council. The council shall review the application, may request additional information and shall approve or reject the application. An approval or rejection from the council shall not be considered a contested case pursuant to chapter 52, title 67, Idaho Code; provided, however, that nothing in this section shall prohibit an aggrieved applicant from seeking judicial review as provided in chapter 52, title 67, Idaho Code.

(3) If the council approves the application, the council shall instruct the director to enter into an agreement with the applicant with the terms of the council's approval. If the council rejects an application, the applicant may reapply with a new application.

(4) In the event a member of the council has a conflict of interest on an application that is before the council, the member shall fully disclose it to the council and abstain from any vote on the application.

History.

I.C., § 67-4739, as added by 2014, ch. 336, § 1, p. 828; am. 2015, ch. 200, § 2, p. 609.

STATUTORY NOTES

Cross References.

State tax commission, Idaho **Const., Art. VII, § 12** and **§ 63-101** et seq.

Amendments.

The 2015 amendment, by ch. 200, in subsection (1), substituted "A letter" for "An affidavit" at the beginning of paragraph (d), substituted "projected average wage" for "projected wages" near the end of paragraph (j), and added paragraphs (l) and (m).

§ 67-4740. Agreement with applicant. — With instruction from the council, and in accordance with criteria as established by rules, the director of the department shall enter into a reimbursement incentive agreement with the applicant, provided the agreement defines the following in addition to the terms as approved by the council:

(a) The term of the agreement, which in no case shall exceed fifteen (15) years;

(b) The projected new state revenues to be generated during the term of the project;

(c) The method and recordkeeping requirements to be used by the applicant to determine the new state revenue paid by the applicant. The approved tax credit percentage applied to new state revenue each year the applicant is entitled to receive the reimbursement during the term of the project;

(d) The projected new jobs;

(e) The terms and conditions of any and all requirements and measurements that must be met prior to the issuance of a tax credit authorization;

(f) The agreed-upon and necessary proof of compliance required prior to tax credit issuance. Proof of compliance provided by the applicant must be adequate to demonstrate to the director that all requirements and measurements have been met for the applicant to receive the tax credit;

(g) The consequences of default by the applicant;

(h) The period to be used to determine the taxes paid at the date of application; and

(i) Identification of the individual or entity that is or will be claiming the refundable credit.

(j) The agreement with the applicant shall specify that no credit will be allowed for taxes that have been or will be reimbursed by the federal government or any subdivision thereof.

History.

I.C., § 67-4740, as added by 2014, ch. 336, § 1, p. 828; am. 2015, ch. 200, § 3, p. 609; am. 2016, ch. 47, § 43, p. 98; am. 2017, ch. 149, § 2, p. 368.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 200, deleted the subsection (1) designation; deleted former paragraphs (i) and (j), which read: “(i) Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller’s permit pursuant to chapter 36, title 63, Idaho Code. (j) The federal employer identification and social security number for each individual or entity included within the definition of business entity and that is included within the filing of the application”; and redesignated former paragraph (k) as present subsection (i).

The 2016 amendment, by ch. 47, made minor stylistic changes in subsections (h) and (i).

The 2017 amendment, by ch. 149, added subsection (j).

CASE NOTES

Standing.

District court erred in dismissing a company’s complaint for declaratory relief, for lack of standing, after the director of the department of commerce presented a facial challenge to the company’s standing. Although the challenged action — granting a refundable tax credit to a competitor to move to Idaho or to significantly increase its work force under the Idaho reimbursement incentive act (§ 67-4737 et seq) — was not directed at the company, it satisfied the palpable injury and causation components of standing, as it had a negative effect on the company, which did not received the subsidy. **Emplrs Res. Mgmt. Co. v. Ronk**, 162 Idaho 774, 405 P.3d 33 (2017).

§ 67-4741. Applicant's annual reporting procedure. — (1) On an annual basis during the term of the project, the applicant shall submit to the department reporting information outlined in the agreement that shall include, but not be limited to, the following:

- (a) Supporting documentation of the new state revenues from the applicant's new project that were paid during the preceding tax year;
- (b) Supporting documentation of the new jobs that were created during the preceding tax year;
- (c) A document that expressly directs and authorizes the tax commission and department of labor to allow the department access to the applicant's returns and other information that may be necessary to verify or otherwise confirm the declared new state revenues;
- (d) A letter from the tax commission confirming that the applicant is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission;
- (e) Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to chapter 36, title 63, Idaho Code; and
- (f) Supporting documentation that the business entity has satisfied the measurements and requirements outlined in the agreement.

(2) If, after review and audit of the information provided by the applicant, or after review of the ongoing performance of the applicant, the department determines that the information is inadequate to provide a reasonable justification for authorizing or continuing a tax credit, the department shall:

- (a) Deny the tax credit for such tax year;
- (b) Terminate the agreement for failure to meet the performance standards established in the agreement; or

(c) Inform the applicant that the returns or other information are inadequate and request the applicant to submit additional documentation.

(3) If, after review and/or audit of the information provided by the applicant, the department determines that the information provided by the applicant provides reasonable justification for authorizing a tax credit, the department shall, based upon the returns and other information:

(a) Determine the amount of the tax credit to be granted to the applicant, which amount shall be the lowest approved percentage that will incentivize creation of new jobs and new state revenue;

(b) Issue a tax credit authorization to the applicant; and

(c) Provide a duplicate copy of the tax credit authorization to the tax commission.

(4) No applicant may claim a tax credit unless the applicant has a tax credit authorization issued by the department. An applicant may claim a tax credit in the amount listed on the tax credit authorization on its tax return.

History.

I.C., § 67-4741, as added by 2014, ch. 336, § 1, p. 828; am. 2015, ch. 200, § 4, p. 609.

STATUTORY NOTES

Cross References.

Department of labor, § 72-1318.

State tax commission, Idaho **Const., Art. VII, § 12** and **§ 63**-101 et seq.

Amendments.

The 2015 amendment, by ch. 200, in subsection (1), substituted “tax year” for “calendar year” in paragraphs (a) and (b); deleted former paragraph (c), which read: “Known or expected detriments to the state or existing industries in the state”; redesignated former paragraphs (d) through (g) as present paragraphs (c) through (f); and substituted “A letter” for “An affidavit” at the beginning of paragraph (d).

§ 67-4742. Annual reporting by department. — (1) The department shall create an annual written report for the governor and the legislature describing:

- (a) The department's success under this act in attracting new jobs;
- (b) The estimated amount of tax credit commitments made by the department and the period of time over which tax credits will be paid; (c) The economic impact on the state related to generating new state revenue and providing tax credits under this act; (d) The estimated costs and economic benefits of the tax credit commitments that the department made; and (e) The actual costs and economic benefits of the tax credit commitments the department made.

(2) On or before November 1, 2015, and every year thereafter, the department shall: (a) Conduct an independent, third-party audit of the tax credits issued under this act; (b) Evaluate the tax credits issued under this act and the effectiveness of the tax credits; and (c) Make recommendations concerning whether the tax credits should be continued, modified or repealed.

(3) The audit as set forth herein shall include an evaluation of:

- (a) The amount of tax credits granted; and
- (b) The effectiveness of the department's internal controls within the application and approval process pursuant to this chapter.

(4) The results of such audit and the director's recommendations shall be forwarded in a timely manner to the office of the governor and to the appropriate legislative committee chairmen.

History.

I.C., § 67-4742, as added by 2014, ch. 336, § 1, p. 828.

STATUTORY NOTES

Compiler's Notes.

The term “this act” throughout this section refers to S.L. 2014, Chapter 336, which is compiled as §§ 67-4737 to 67-4744.

§ 67-4743. Suspension of Idaho reimbursement incentive act. — (1) The director shall suspend the issuance of all new agreements with applicants upon the occurrence of the following conditions:

(a) The governor orders a temporary reduction of general fund spending authority, pursuant to [section 67-3512A, Idaho Code](#); and

(b) The governor issues an executive order directing the department to suspend the issuance of new agreements during the tax year in which the temporary reduction of general fund spending authority has been ordered and the executive order issued.

(2) Pursuant to this chapter, all agreements that have been approved by the council prior to the governor issuing an executive order as provided by subsection (1)(b) of this section shall remain in full force and effect and shall not be modified or impaired as a result of the executive order.

(3) During the period of time that new agreements have been suspended, the director shall maintain the necessary services required pursuant to this chapter to support all existing agreements and comply with all required reporting and review responsibilities.

(4) The governor may, by executive order, remove the suspension issued pursuant to subsection (1)(b) of this section.

History.

[I.C., § 67-4743](#), as added by 2014, ch. 336, § 1, p. 828.

§ 67-4744. Director rulemaking authority. — The director shall promulgate rules pursuant to chapter 52, title 67, Idaho Code, in the furtherance of the objectives of this act.

History.

I.C., § 67-4744, as added by 2014, ch. 336, § 1, p. 828.

STATUTORY NOTES

Compiler's Notes.

The term “this act” at the end of this section refers to S.L. 2014, Chapter 336, which is compiled as §§ 67-4737 to 67-4744.

Chapter 48
SURPLUS PROPERTY AGENCY

Sec.

67-4801 — 67-4806. [Repealed.]

§ 67-4801 — 67-4806. Surplus property. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1957, ch. 161, §§ 1-6, p. 288; am. 1959, ch. 94, § 1, p. 206; am. 1961, ch. 312, § 1, p. 593, were repealed by S.L. 1974, ch. 34, § 1. For present comparable law, see §§ 67-5740 to 67-5744.

Chapter 49

AUDITORIUM DISTRICTS

Sec.

67-4901. Purpose of act.

67-4902. Definitions.

67-4903. Jurisdiction to establish districts.

67-4904. Petition — Contents — Amendments.

67-4905. Bond of petitioners.

67-4906. Notice of hearing on petition — Jurisdiction.

67-4907. Hearings on petitions — Election for organization and officers.

67-4908. Qualification of members of board.

67-4909. Organization of board — Accounts of treasurer — Compensation of members — Annual audit — Removal of directors.

67-4910. Meetings — Vacancies.

67-4911. Elections — Terms of office.

67-4912. General powers of board.

67-4913. Taxes.

67-4914. Levy and collection of taxes.

67-4915. Levies to cover defaults and deficiencies.

67-4916. Officers to levy and collect taxes.

67-4917. Sinking fund.

67-4917A. Purposes.

67-4917B. Hotel/motel room sales tax.

67-4917C. Collection and administration of hotel/motel room sales tax by state tax commission — Distribution.

67-4918. Inclusion of property petitioned — Hearing — Order.

67-4919. Exclusion of property petitioned — Hearing — Order.

67-4920. Liability of property included or excluded.

67-4921. Issuance of negotiable coupon bonds — Form and terms.

67-4922. Submission of proposition to electorate.

67-4922A. Leasing of land and improvements.

67-4923. Notice of election.

67-4924. Conduct of election — Canvass of returns.

67-4925. Effect of election — Subsequent elections.

67-4926. Correction of faulty notices.

67-4927. Share of liquor fund allotted to auditorium districts. [Repealed.]

67-4928. Elections — Validation of acts.

67-4929. Inclusion or exclusion — Election procedure.

67-4930. Dissolution of district — Procedure.

67-4931. Application of campaign report law to auditorium district elections. [Repealed.]

§ 67-4901. Purpose of act. — It is hereby declared that the organization of auditorium or community center districts, having the purposes and powers provided in this act, will serve the public need and use and will promote the prosperity, security and general welfare of the inhabitants of said districts.

History.

1959, ch. 137, § 1, p. 299; am. 1978, ch. 276, § 1, p. 667.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1959, Chapter 137, which is compiled as §§ 67-4901 to 67-4917, 67-4918 to 67-4922, and 67-4923 to 67-4926. Probably, the reference should be to “this chapter,” being chapter 49, title 67, Idaho Code.

§ 67-4902. Definitions. — An auditorium or community center district is one to build, operate, maintain, market and manage for public, commercial and/or industrial purposes by any available means public auditoriums, exhibition halls, convention centers, sports arenas and facilities of a similar nature, and for that purpose any such district shall have the power to construct, maintain, manage, market and operate such facilities.

A district organized after July 1, 2001, shall consist of a single contiguous area comprising all or part of one (1) or more municipalities or counties.

The word “board” as used in this chapter shall mean the board of directors of a district.

A “qualified elector” of a district, within the meaning of and entitled to vote under this chapter, is a person who resides in the district and is otherwise qualified under [section 34-104, Idaho Code](#).

Wherever the term “publication” is used in this chapter it means publication twice, the first time not less than twelve (12) days prior to an election, and the second time not less than five (5) days prior to an election, as provided in [section 34-1406, Idaho Code](#).

History.

1959, ch. 137, § 2, p. 299; am. 1974, ch. 139, § 1, p. 1343; am. 1978, ch. 276, § 2, p. 667; am. 1995, ch. 118, § 90, p. 417; am. 1998, ch. 21, § 1, p. 123; am. 2001, ch. 258, § 1, p. 926.

CASE NOTES

Purpose of Auditorium District.

An auditorium district must build, operate, maintain, market, and manage a public facility. An auditorium district cannot simply market existing facilities within its borders. [AmeriTel Inns, Inc. v. Pocatello-Chubbuck Auditorium](#), 146 Idaho 202, 192 P.3d 1026 (2008).

Cited Ameritel Inns, Inc. v. Greater Boise Auditorium Dist., 141 Idaho 849, 119 P.3d 624 (2005).

§ 67-4903. Jurisdiction to establish districts. — The district court sitting in and for any county in this state, or any judge thereof in vacation, is hereby vested with jurisdiction, power and authority to establish districts which may be entirely within or partly within and partly without the judicial district in which said court is located.

History.

1959, ch. 137, § 3, p. 299.

§ 67-4904. Petition — Contents — Amendments. — The organization of a district shall be initiated by a petition filed in the office of the clerk of the court vested with jurisdiction, in a county in which the major part of the real property in the proposed district is situated. The petition shall be signed by not less than ten percent (10%) of the qualified electors who reside within the boundaries of the proposed district, and not less than ten (10) of whom shall reside in each election precinct which is wholly or partially within the boundaries of any such proposed district.

The petition shall set forth: (1) The name of the proposed district consisting of a chosen name preceding the words, “auditorium or community center district.”

(2) A general description of the facilities to be constructed and any marketing programs for such facilities within and for the district.

(3) The estimated cost of the proposed facilities and any marketing programs for such facilities and the estimated annual budget for the proposed district.

(4) The maximum tax rate that the board will be authorized to levy or impose.

(5) A general description of the boundaries of the district or the territory to be included therein, with such certainty as to enable a property owner to determine whether or not his property is within the district.

(6) A prayer for the organization of the district.

No petition with the requisite signatures shall be declared null and void on account of alleged clerical errors or nonmaterial errors in the description of the territory, but the court may at any time permit the petition to be amended to conform to the facts by correcting any clerical or nonmaterial errors in the description of the territory, or in any other particular. Similar petitions or duplicate copies of the same petition for the organization of the same district may be filed and shall together be regarded as one (1) petition. All such petitions filed prior to the hearing on the first petition filed, shall be considered by the court the same as though filed with the first petition placed on file.

History.

1959, ch. 137, § 4, p. 299; am. 1963, ch. 95, § 1, p. 312; am. 1978, ch. 20, § 1, p. 40; am. 1978, ch. 276, § 3, p. 667; am. 1998, ch. 21, § 2, p. 123; am. 2001, ch. 258, § 2, p. 926.

STATUTORY NOTES**Amendments.**

This section was amended by two 1978 acts which appear to be compatible and have been compiled together.

The 1978 amendment, by ch. 20, in the introductory paragraph in the second sentence substituted “ten percent (10%)” for “3,000” following “by not less than”.

The 1978 amendment, by ch. 276, in the introductory paragraph in the second sentence substituted “ten per cent (10%) of the qualified electors who reside within the boundaries of the proposed district,” for “3,000 of the taxpayers who pay a general tax on real property owed by him or her with the district,”; in the second paragraph in sentence (1) added “or community center”, in sentence (2) substituted “facilities” for “improvements” and deleted “or installed” following “constructed”, in sentence (3) substituted “facilities” for “improvements”.

Effective Dates.

Section 2 of S.L. 1978, ch. 20 declared an emergency. Approved February 23, 1978.

CASE NOTES**Purpose of Auditorium District.**

An auditorium district must build, operate, maintain, market, and manage a public facility. An auditorium district cannot simply market existing facilities within its borders. [AmeriTel Inns, Inc. v. Pocatello-Chubbuck Auditorium](#), 146 Idaho 202, 192 P.3d 1026 (2008).

§ 67-4905. Bond of petitioners. — At the time of filing the petition or at any time subsequent thereto, and prior to the time of hearing on said petition a bond shall be filed, with security approved by the court, sufficient to pay all expenses connected with the proceedings in case the organization of the district is not effected. If at any time during the proceeding the court shall be satisfied that the bond first executed is insufficient in amount, it may require the execution of an additional bond within a time to be fixed, not less than ten (10) days distant, and upon failure of the petitioner to execute the same, the petition shall be dismissed.

History.

1959, ch. 137, § 5, p. 299.

§ 67-4906. Notice of hearing on petition — Jurisdiction. —

Immediately after the filing of such petition, the court wherein such petition is filed or a judge thereof in vacation, shall by order fix a place and time, not less than twenty (20) days nor more than forty (40) days after the petition is filed, for hearing thereon and thereupon the clerk of said court shall cause notice by publication to be made of the pendency of the petition and of the time and place of hearing thereon; the clerk of said court shall also forthwith cause a copy of said notice to be mailed by U.S. registered mail to the board of county commissioners of each of the several counties and to the governing body of each municipality having territory within the proposed district.

The district court in and for the county in which the petition for the organization of district has been filed, shall thereafter for all purposes of this act, except as hereinafter otherwise provided, maintain and have original and exclusive jurisdiction, coextensive with the boundaries of the district, and of the real property proposed to be included in said district or affected by said district without regard to the usual limits of its jurisdiction.

No judge of such court wherein such petition is filed shall be disqualified to perform any duty imposed by this act by reason of ownership of property within any proposed district.

History.

1959, ch. 137, § 6, p. 299.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the last paragraph refers to S.L. 1959, Chapter 137, which is compiled as §§ 67-4901 to 67-4917, 67-4918 to 67-4922, and 67-4923 to 67-4926. Probably, the reference should be to “this chapter,” being chapter 49, title 67, Idaho Code.

§ 67-4907. Hearings on petitions — Election for organization and officers. — On the day fixed for such hearing or at an adjournment thereof the court shall, if the petition proposes a property tax, ascertain from the tax rolls of the county or counties in which the district is located or into which it extends, the total number of taxpayers within the proposed district, who pay a general tax on real property owned by him or her within the district.

If the court finds that no petition has been signed and presented in conformity with this chapter, or that the material facts are not as set forth in the petition filed, it shall dismiss said proceedings and adjudge the costs against the signers of the petition in such proportion as it shall deem just and equitable. No appeal or writ of error shall lie from an order dismissing said proceedings; but nothing herein shall be construed to prevent the filing of a subsequent petition or petitions for similar improvements or for a similar district, and the right so to renew such proceedings is hereby expressly granted and authorized.

Any time after the filing of the petition for the organization of a district and before the day fixed for the hearing thereon, the owner or owners of any real property within the proposed district may file a petition with the district court stating reasons why said property should not be included therein, why his land or any part thereof will not be benefited directly or indirectly by the proposed district, or should not be embraced in said district and made liable to taxation therefor, and praying that said property be excluded therefrom. Such petition shall be duly verified and shall describe the property sought to be excluded. The court shall conduct a hearing on said petition and shall hear all objections to the inclusion in the district of any lands described in said petition. In case any owner of real estate included in said proposed district shall satisfy the court that his real estate, or any part thereof, has been wrongfully included therein or will not be benefited thereby then the court shall exclude such real estate as will not be benefited.

Upon said hearing, if it shall appear that a petition for the organization of a district has been signed and presented as hereinabove provided, in conformity with this chapter, and that the allegations of the petition are true, the court shall, by order duly entered of record, direct that the question of

the organization of the district shall be submitted to the qualified electors of the district at an election to be held, subject to the provisions of [section 34-106, Idaho Code](#), for that purpose, and such order shall direct the county clerk to appoint election officials of the election. The county clerk of the county having jurisdiction shall give published notice of the time and place of an election to be held in the district.

Such election shall be held and conducted in accordance with the provisions of title 34, Idaho Code.

At any time after the filing of the petition herein referred to and before the day fixed for hearing, nominees for the board of directors of the district may be nominated by the filing of a petition designating the name or names of the nominee or nominees, signed by at least five (5) qualified electors of the district. If upon the hearing as herein provided the court shall order an election for the creation of the district, the court shall also ascertain the names of persons nominated by the board of directors, and shall order that the names of persons whom the court finds to have been properly nominated shall be listed upon a ballot submitted to the electors at such election. In the event the court makes its order providing for such election, it shall prescribe the form of the question and ballot relating to the election of the directors, provided that all matters may be contained upon one (1) ballot to be submitted to the voters.

At such election the voters shall vote for or against the organization of the district, and for five (5) qualified electors, who shall constitute the board of directors of the district, if organized, one (1) director to act until the first biennial election, two (2) until the second, and two (2) until the third biennial election.

The county board of canvassers shall certify the returns of the election to the district court having jurisdiction. If a majority of the votes cast at said election are in favor of the organization, the district court shall declare the district organized and give it a corporate name by which, in all proceedings, it shall thereafter be known, and designated the first board of directors elected, and thereupon the district shall be a governmental subdivision of the state of Idaho and a body corporate with all the powers of a public or quasi-municipal corporation except that districts formed prior to January 1,

1987, or districts with twenty-five thousand (25,000) or more population shall have no power to levy and collect property taxes.

If an order be entered establishing the district, such order shall be deemed final and no appeal or writ of error shall lie therefrom, and the entry of such order shall finally and conclusively establish the regular organization of the said district against all persons except the state of Idaho, in an action in the nature of a writ of quo warranto, commenced by the attorney general within thirty (30) days after said decree declaring such district organized as herein provided, and not otherwise. The organization of said district shall not be directly or collaterally questioned in any suit, action or proceeding except as herein expressly authorized.

History.

1959, ch. 137, § 7, p. 299; am. 1987, ch. 70, § 1, p. 129; am. 1995, ch. 118, § 91, p. 417; am. 1998, ch. 21, § 3, p. 123; am. 2001, ch. 258, § 3, p. 926; am. 2009, ch. 341, § 148, p. 993.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Amendments.

The 2009 amendment, by ch. 341, in the fourth paragraph, in the first sentence, inserted “direct the county clerk to” and substituted “appoint election officials of the election” for “appoint three (3) qualified electors of the district as judges of said election” and, in the last sentence, substituted “county clerk of the county” for “clerk of the court”; in the fifth paragraph, substituted “conducted in accordance with the provisions of title 34, Idaho Code” for “conducted in the same manner as general elections in this state”; and in the first sentence in the next-to-last paragraph, substituted “county board of canvassers” for “judges of election.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 67-4908. Qualification of members of board. — Whenever a district has been declared duly organized, the members of the board shall qualify by filing with the clerk of court their oaths of office, and corporate surety bonds at the expense of the district in an amount not to exceed \$1,000 each, the form thereof to be fixed and approved by the court, conditioned for the faithful performance of their duties as directors.

History.

1959, ch. 137, § 8, p. 299.

§ 67-4909. Organization of board — Accounts of treasurer — Compensation of members — Annual audit — Removal of directors. —

After taking oath and filing bonds, the board shall choose one (1) of its members as chairman of the board and president of the district, and shall elect a secretary and a treasurer of the board and of the district, who may or may not be members of the board. The secretary and the treasurer may be one (1) person. Such board shall adopt a seal and the secretary shall keep, in a well-bound book, a record of all its proceedings, minutes of all meetings, certificates, contracts, bonds given by employees and all corporate acts which shall be open to inspection to all interested parties.

The treasurer shall keep strict and accurate accounts of all money received by and disbursed for and on behalf of the district, in permanent records. He shall file with the clerk of the court, at the expense of the district, a corporate fidelity bond in an amount not less than five thousand dollars (\$5,000), conditioned on the faithful performance of the duties of his office.

Each member of the board shall receive as compensation for his service a sum not in excess of sixty dollars (\$60.00) per annum. No member of the board shall receive any compensation as an employee of the district or otherwise, other than that herein provided and no member of the board shall be interested in any contract or transaction with the district except in his official representative capacity.

It shall be the duty of the board of directors to cause an audit to be made of all financial affairs of the district during each year ending November 30th as required in [section 67-450B, Idaho Code](#).

The court having jurisdiction of the district shall have the power to remove directors for cause shown, on petition, notice and hearing.

History.

1959, ch. 137, § 9, p. 299; am. 1987, ch. 70, § 2, p. 129; am. 1992, ch. 15, § 1, p. 38; am. 1993, ch. 387, § 16, p. 1417.

§ 67-4910. Meetings — Vacancies. — The board shall meet regularly once each month at a time and in a place to be designated by the board. Special meetings may be held as often as the needs of the district require, on notice to each member of the board. Three (3) members of the board shall constitute a quorum at any meeting. Any vacancy on the board shall be filled by the remaining members or member of the board, the appointee to act until the next biennial election when the vacancy shall be filled by election. If the board shall fail, neglect or refuse to fill any vacancy within thirty (30) days after the same occurs, the court having jurisdiction shall fill such vacancy.

History.

1959, ch. 137, § 10, p. 299.

§ 67-4911. Elections — Terms of office. — On an election date as provided for in section 34-106(1), Idaho Code, in May of the first odd-numbered year after the organization of any district, and every second year thereafter, an election shall be held, which shall be known as the biennial election of the district.

At the first biennial election in any district hereafter organized, and each sixth year thereafter, there shall be elected by the qualified electors of the district, one (1) member of the board to serve for a term of six (6) years; at the second biennial election and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years, and at the third biennial election, and each sixth year thereafter, there shall be elected two (2) members of the board to serve for terms of six (6) years. Provided, a member of the board once in office shall serve until his successor is elected, qualified and takes office.

Not later than 5:00 p.m. on the ninth Friday before any such election, nominations may be filed with the secretary of the board. The county clerk shall provide for holding such election and shall appoint judges to conduct it. The county clerk shall give notice of election by publication, and shall arrange such other details in connection therewith. Adequate polling places shall be provided throughout the district boundaries for all elections. The returns of the election shall be certified to and shall be canvassed and declared by the board of county commissioners which shall report the results to the district. The candidate or candidates, according to the number of directors to be elected, receiving the most votes, shall be elected. Any new member of the board shall qualify in the same manner as members of the first board qualify.

In any election for director, if after the deadline for filing a declaration of intent as a write-in candidate, it appears that the number of qualified candidates who have been nominated is equal to the number of directors to be elected, it shall not be necessary for the candidates to stand for election, and the board shall declare such candidates elected as directors, and the secretary of the board shall immediately make and deliver to such persons certificates of election signed by him and bearing the seal of the district.

History.

1959, ch. 137, § 11, p. 299; am. 1974, ch. 139, § 2, p. 1343; am. 1995, ch. 118, § 92, p. 417; am 1998, ch. 21, § 3, p. 123; am. 2001, ch. 258, § 4, p. 926; am. 2009, ch. 341, § 149, p. 993; am. 2011, ch. 11, § 26, p. 24.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 341, in the first paragraph, substituted “in November of the first odd-numbered year” for “in the second calendar year”; and in the third paragraph, in the second sentence, substituted “county clerk” for “board,” in the third sentence, substituted “county clerk” for “secretary of the district” and deleted “as the board may direct” from the end, and, in the fifth sentence, added “of county commissioners which shall report the results to the district.”

The 2011 amendment, by ch. 11, substituted “May” for “November” in the first paragraph; and, in the first sentence of the third paragraph, substituted “ninth Friday” for “sixth Friday” and deleted “and if a nominee does not withdraw his name before the first publication of the notice of election, his name shall be placed on the ballot” from the end.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011. Approved February 23, 2011.

§ 67-4912. General powers of board. — For and on behalf of the district the board shall have the following powers:

- (a) To have perpetual existence;
- (b) To have and use a corporate seal;
- (c) To sue and be sued, and be a party to suits, actions, and proceedings;
- (d) Except as otherwise provided in this chapter, to enter into contracts and agreements, cooperative and otherwise, affecting the affairs of the district, including contracts with the United States of America and any of its agencies or instrumentalities, and contracts with corporations, public or private, municipalities, or governmental subdivisions, and to cooperate with any one (1) or more of them in building, erecting, marketing or constructing facilities within the district. Except in cases in which a district will receive aid from a governmental agency, purchasing shall be accomplished in accordance with the provisions of chapter 28, title 67, Idaho Code;
- (e) To borrow money and incur indebtedness and evidence the same by certificate, notes or debentures, and to issue bonds, in accordance with the provisions of this chapter;
- (f) To acquire, dispose of and encumber real and personal property, and any interest therein, including leases and easements within said district;
- (g) To refund any bonded indebtedness of the district without any election; provided, however, that the obligations of the district shall not be increased by any refund of bonded indebtedness. Otherwise the terms and conditions of refunding bonds shall be substantially the same as those of an original issue of bonds;
- (h) To have the management, control and supervision of all the business and affairs of the district, and the construction, installation, operation and maintenance of district facilities therein or therefor;
- (i) To hire and retain agents, employees, engineers and attorneys;
- (j) To construct and maintain works and establish and maintain facilities across or along any public street or highway, and in, upon or over any

vacant public lands, which public lands are now, or may become, the property of the state of Idaho, and to construct works and establish and maintain facilities across any stream of water or watercourse; provided, however, that the district shall promptly restore any such street or highway to its former state of usefulness as nearly as may be, and shall not use the same in such manner as to completely or unnecessarily impair the usefulness thereof;

(k) To fix and from time to time to increase or decrease rates, tolls or charges for services or facilities furnished by the district, and to pledge such revenue for the payment of any indebtedness of the district. The board shall fix rates, tolls and charges;

(l) To petition to enlarge the district by obtaining the consent of not less than ten percent (10%) of the qualified electors of any area to be so included, and then to follow the procedure set forth herein for creating said district;

(m) To promote any functions for said district, provided that said board shall not engage in operations that are inconsistent with the purpose of said district; and it shall be the policy of the board not to compete with existing facilities and services in the district, wherever practicable;

(n) To adopt and amend bylaws not in conflict with the constitution and laws of the state for carrying on the business, objects and affairs of the board and of the districts;

(o) To have and exercise all rights and powers necessary or incidental to or implied from the specific powers granted herein, except that districts formed prior to January 1, 1987, or districts with twenty-five thousand (25,000) or more population shall have no power to levy and collect property taxes. Such specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter.

History.

1959, ch. 137, § 12, p. 299; am. 1978, ch. 276, § 4, p. 667; am. 1987, ch. 70, § 3, p. 129; am. 1998, ch. 21, § 4, p. 123; am. 2005, ch. 213, § 38, p. 637.

CASE NOTES

Express legislative authority.

Purpose of auditorium district.

Express Legislative Authority.

Greater Boise Auditorium District could not make any expenditure to support or to oppose any measure to be voted upon in an auditorium district election, without express legislative authority; since the legislature did not grant such authority, the district court erred in holding that the auditorium district had authority to make such expenditures. *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 119 P.3d 624 (2005).

Purpose of Auditorium District.

An auditorium district must build, operate, maintain, market, and manage a public facility. An auditorium district cannot simply market existing facilities within its borders. *AmeriTel Inns, Inc. v. Pocatello-Chubbuck Auditorium*, 146 Idaho 202, 192 P.3d 1026 (2008).

§ 67-4913. Taxes. — In addition to the other means providing revenue for such districts as herein provided, in those districts formed after January 1, 1987, or in those districts with twenty-five thousand (25,000) or fewer population, the board shall have power and authority to levy and collect property taxes on and against all taxable property within the district, provided said property taxes shall not exceed a levy of four-hundredths percent (.04%) of market value for assessment purposes for all levies provided in sections 67-4913, 67-4914, 67-4915, 67-4916 and 67-4917, Idaho Code; provided that for any auditorium district established after July 1, 2001, such property tax shall not exceed the maximum tax rate authorized in the petition. Districts with a population of more than twenty-five thousand (25,000) persons shall not have the power and authority to levy and collect property taxes on and against all taxable property within the district.

History.

1959, ch. 137, § 13, p. 299; am. 1978, ch. 21 § 1, p. 42; am. 1987, ch. 70 § 4 p. 129; am. 1998, ch. 21, § 5, p. 123; am. 2001, ch. 258, § 5, p. 926.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1978, ch. 21 declared an emergency. Approved February 23, 1978.

§ 67-4914. Levy and collection of taxes. — To levy and collect taxes as herein provided, the board of a district authorized to levy and collect ad valorem taxes shall, in each year, determine the amount of money necessary to be raised by taxation, taking into consideration other sources of revenue of the district, and shall fix a rate of levy which, when levied upon every dollar of market value for assessment purposes of taxable property within the district, and with other revenues will raise the amount required by the district annually, to supply funds for paying expenses of organization and the costs of construction, operating and maintaining the works and equipment of the district, and promptly to pay in full, when due, all interest on the principal of bonds and other obligations of the district, and in the event of accruing defaults or deficiencies, an additional levy may be made as provided in section 67-4915[, Idaho Code]. The board shall, on or before the first day of September of each year, certify to the board of county commissioners of each county within the district, or having a portion of its territory within the district, the rate so fixed with directions that at the time and in the manner required by law for levying taxes for county purposes, such board of county commissioners shall levy such tax upon the market value for assessment purposes of all taxable property within the district, in addition to such other taxes as may be levied by such board of county commissioners at the rate so fixed and determined.

History.

1959, ch. 137, § 14, p. 299; am. 1987, ch. 70, § 5, p. 129.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion at the end of the first sentence was added by the compiler to conform to the statutory citation style.

§ 67-4915. Levies to cover defaults and deficiencies. — The board of a district authorized to levy and collect ad valorem taxes in certifying annual levies as herein provided, shall take into account the maturing indebtedness for the ensuing year as provided in its contracts, maturing bonds and interest on bonds, and deficiencies and defaults of prior years, and shall make ample provision for the payment thereof. In case the moneys produced from such levies, together with other revenues of the district are not sufficient punctually to pay the annual instalments on its contracts or bonds, and interest thereon, and to pay defaults and deficiencies, then the board shall make such additional levies of taxes as may be necessary for such purposes, and notwithstanding any limitations, such taxes shall be made and continue to be levied until the indebtedness of the district shall be fully paid.

History.

1959, ch. 137, § 15, p. 299; am. 1987, ch. 70, § 6, p. 129.

§ 67-4916. Officers to levy and collect taxes. — It shall be the duty of the body having authority to levy taxes within each county, to levy the taxes of a district authorized to levy and collect ad valorem taxes as provided in this act and it shall be the duty of all officials charged with the duty of collecting taxes to collect such taxes at the time and in the form and manner and with like interest and penalties as other taxes are collected and when collected to pay the same to the district ordering its levy and collection, and the payment of such collections shall be made monthly to the treasurer of the district and paid into the depository thereof to the credit of the district.

History.

1959, ch. 137, § 16, p. 299; am. 1978, ch. 276, § 5, p. 667; am. 1987, ch. 70, § 7, p. 129.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the middle of the section refers to S.L. 1959, Chapter 137, which is compiled as §§ 67-4901 to 67-4917, 67-4918 to 67-4922, and 67-4923 to 67-4926. Probably, the reference should be to “this chapter,” being chapter 49, title 67, Idaho Code.

§ 67-4917. Sinking fund. — Whenever any indebtedness has been incurred by a district authorized to levy and collect ad valorem taxes, it shall be lawful for the board to levy taxes and collect revenue for the purpose of creating a reserve fund in such amount as the board may determine, which may be used to meet the obligations of the district, for maintenance and operating charges and depreciation, and provide extensions of and betterments to the improvements of the district.

History.

1959, ch. 137, § 17, p. 299; am. 1987, ch. 70, § 8, p. 129.

§ 67-4917A. Purposes. — The purposes of this act are to provide authority to auditorium or community center districts organized under chapter 49, title 67, Idaho Code, to levy and collect a “hotel/motel room sales tax” on the receipts derived by hotels and motels within the district from the furnishing of hotel and motel rooms, except no tax shall be imposed where residence therein is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days; and to provide for the levy of such sales tax in addition to the levy by a district authorized to levy and collect ad valorem taxes; and to provide for the collection, administration and remittance of said taxes by the state tax commission on behalf of an auditorium or community center district.

History.

I.C., § 67-4917A, as added by 1978, ch. 277, § 1, p. 673; am. 1987, ch. 70, § 9, p. 129; am. 1988, ch. 174, § 3, p. 303.

STATUTORY NOTES

Cross References.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101 et seq.](#)

Compiler’s Notes.

The term “this act” refers to S.L. 1978, Chapter 277, which is compiled as §§ 67-4917A to 67-4917C.

CASE NOTES

Constitutionality.

Sections 67-4917A to 67-4917C, which authorize auditorium districts to impose a sales tax on receipts obtained from the rental of hotel and motel rooms, are constitutional. [Greater Boise Auditorium Dist. v. Royal Inn](#), 106 Idaho 884, 684 P.2d 286 (1984).

§ 67-4917B. Hotel/motel room sales tax. — The board shall have power and authority to levy a sales tax of not to exceed five percent (5%) of the receipts derived by hotels and motels within the district from the furnishing of hotel and motel rooms, except no tax shall be imposed where residence therein is maintained continuously under the terms of a lease or similar agreement for a period in excess of thirty (30) days, and except that no tax shall be charged on the sale of rooms by the Idaho Ronald McDonald House; provided that for any auditorium district established after July 1, 2001, such sales tax shall not exceed the maximum tax rate authorized in the petition. The levy and collection of said sales tax shall not be subject to the limitations or other provisions of sections 67-4913, 67-4914, 67-4915 and 67-4916, Idaho Code. The revenues received by the district from such sales tax shall be deposited in the depository of the district. Promptly following the adoption by the board of the resolution to levy such tax, the secretary of the board shall certify to the state tax commission that such levy has been adopted and shall state the effective date thereof and shall transmit to the commission a certified copy of such resolution. The effective date of any such levy shall not be earlier than the first day of the month not less than sixty (60) days following certification of such levy to the commission.

History.

I.C., § 67-4917B, as added by 1978, ch. 277, § 2, p. 673; am. 1987, ch. 70, § 10, p. 129; am. 1988, ch. 174, § 4, p. 303; am. 1995, ch. 219, § 1, p. 762; am. 2001, ch. 258, § 6, p. 926.

STATUTORY NOTES

Cross References.

State tax commission, Idaho **Const., Art. VII, § 12** and **§ 63-101** et seq.

Effective Dates.

Section 4 of S.L. 1995, ch. 219 declared an emergency. Approved March 20, 1995.

CASE NOTES

Constitutionality.

Standing.

Constitutionality.

Sections 67-4917A to 67-4917C, which authorize auditorium districts to impose a sales tax on receipts obtained from the rental of hotel and motel rooms, are constitutional. *Greater Boise Auditorium Dist. v. Royal Inn*, 106 Idaho 884, 684 P.2d 286 (1984).

Standing.

Statute authorizing the Greater Boise Auditorium District to impose the hotel tax did not require a hotel or motel to increase their prices by the amount of the tax, such that the legal incidence of the tax fell upon the hotels and motels within the auditorium district; the fact that the corporation was one of a limited number of taxpayers was relevant to standing because its claim in this case was directly related to the tax it was required to pay; therefore, the corporation had standing to bring the lawsuit. *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 119 P.3d 624 (2005).

§ 67-4917C. Collection and administration of hotel/motel room sales tax by state tax commission — Distribution. — (1) A district which has levied a sales tax pursuant to section 67-4917B, Idaho Code, may contract with the state tax commission for the collection and administration of the tax in like manner, and under the definitions and rules of said commission for the collection and administration of the state sales tax under chapter 36, title 63, Idaho Code, on receipts from the furnishing of hotel and motel rooms. A district which levies such tax shall have the right to review and audit the records of collection thereof maintained by the commission and the returns of hotel and motel owners and operators. Alternatively, such district shall have authority to administer and collect such tax.

(2) All revenues collected by the tax commission pursuant to [section 67-4917B, Idaho Code](#), shall be distributed as follows:

(a) An amount of money shall be distributed to the state refund account sufficient to pay current refund claims. All refunds authorized by the tax commission to be paid shall be paid through the state refund account and those moneys are continuously appropriated.

(b) An amount of money equal to the actual cost of the collection and administration of the tax imposed by the provisions of this section shall be retained by the tax commission. The amount retained by the commission shall not exceed the amount authorized to be expended by appropriation by the legislature. Any unencumbered balance in excess of the actual cost at the end of each fiscal year shall be distributed as provided by paragraph (c) of this subsection.

(c) All remaining moneys received pursuant to this chapter shall be placed in an account designated by the state controller and remitted monthly to the district levying the tax.

History.

[I.C., § 67-4917C](#), as added by 1978, ch. 277, § 3, p. 673; am. 1979, ch. 101, § 1, p. 245; am. 1986, ch. 73, § 20, p. 201; am. 1994, ch. 180, § 217, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State refund account, § 63-3067.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101](#) et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 217 was effective January 2, 1995.

CASE NOTES

Constitutionality.

Sections 67-4917A to 67-4917C, which authorize auditorium districts to impose a sales tax on receipts obtained from the rental of hotel and motel rooms, are constitutional. [Greater Boise Auditorium Dist. v. Royal Inn](#), 106 Idaho 884, 684 P.2d 286 (1984).

§ 67-4918. Inclusion of property petitioned — Hearing — Order. —

The boundaries of any district organized under the provisions of this act may be changed in the manner herein prescribed, but the change of boundaries of the district shall not impair or affect its organization or its rights in or to property, or any of its rights or privileges whatsoever, except that no district organized prior to January 1, 1987, shall ever have the power to levy and collect property taxes, even though the boundaries of the district may be adjusted to reduce the population of the district to less than one hundred thousand (100,000); nor shall it affect or impair or discharge any contract, obligation, lien or charge for or upon which it might be liable or chargeable had any such change of boundaries not been made; and provided further, no auditorium district established after July 1, 2001, shall levy or impose a type of tax not authorized in the petition.

History.

1959, ch. 137, § 18, p. 299; am. 1987, ch. 70, § 11, p. 129; am. 2001, ch. 258, § 7, p. 926.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1959, Chapter 137, which is compiled as §§ 67-4901 to 67-4917, 67-4918 to 67-4922, and 67-4923 to 67-4926. Probably, the reference should be to “this chapter,” being chapter 49, title 67, Idaho Code.

§ 67-4919. Exclusion of property petitioned — Hearing — Order. —

The owner or owners in fee of any real property constituting a portion of the district may file with the board a petition praying that such lands be excluded and taken from said district. Petitions shall describe the property which the petitioners desire to have excluded. Such petition must be acknowledged in the same manner and form as required in case of a conveyance of land and be accompanied by a deposit of money sufficient to pay all costs of the exclusion proceedings. The secretary of the board shall cause a notice of filing of such petition to be published in the county in which said property or the major portion thereof is located. The notice shall state the filing of such petition, the names of petitioners, description of the property mentioned in said petition, and the prayer of said petitioners; and it shall notify all persons interested to appear at the office of said board at the time named in said notice, showing cause in writing, if any they have, why said petition should not be granted. The board at the time and place mentioned in the notice, or at the time or times at which the hearing of said petition may be adjourned, shall proceed to hear the petition and all objections thereto, presented in writing by any person showing cause as aforesaid, why the prayer of the petition should not be granted. The filing of such petition shall be deemed and taken as an assent by each and all such petitioners to the exclusion from the district of the property mentioned in the petition or any part thereof. The board, if it deems it not for the best interests of the district that the property mentioned in the petition, or portion thereof, shall be excluded from the district, shall order that said petition be denied, but if it deems it for the best interest of the district that the property mentioned in the petition, or some portion thereof, be excluded from the district, then the board may order the property mentioned in the petition or some portion thereof, excluded from the district. Upon allowance of such petition, the board shall file a certified copy of the order of the board making such a change with the clerk of the court and upon order of the court said property shall be excluded from the district.

History.

1959, ch. 137, § 19, p. 299.

§ 67-4920. Liability of property included or excluded. — All real property included within, or excluded from, a district authorized to levy and collect ad valorem taxes shall thereafter be subject to the levy of taxes for the payment of any indebtedness of the district outstanding at the time of inclusion or exclusion.

History.

1959, ch. 137, § 20, p. 299; am. 1987, ch. 70, § 12, p. 129.

§ 67-4921. Issuance of negotiable coupon bonds — Form and terms.

— To carry out the purposes of this act, and to pay the necessary and ordinary expenses of a district authorized to levy and collect ad valorem taxes, the board is hereby authorized to issue negotiable coupon bonds of the district. Bonds shall bear interest at a rate not exceeding that provided by law payable semi-annually, and shall be due and payable serially, either annually or semi-annually, commencing not later than three (3) years and extending not more than thirty (30) years from date. The form and terms of said bonds, including provisions for their payment and redemption, shall be determined by the board. If the board so determines, such bonds may be redeemable prior to maturity upon payment of a premium, not exceeding five per cent (5%) of the principal thereof. Said bonds shall be executed in the name of and on behalf of the district and signed by the chairman of the board with the seal of the district affixed thereto and attested by the secretary of the board. Said bonds shall be in such denominations as the board shall determine and the bonds and coupons thereto attached shall be payable to bearer. Interest coupons shall bear the original or facsimile signature of the chairman of the board.

History.

1959, ch. 137, § 21, p. 299; am. 1970, ch. 133, § 20, p. 309; am. 1978, ch. 276, § 6, p. 667; am. 1987, ch. 70, § 13, p. 129.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the first sentence refers to S.L. 1959, Chapter 137, which is compiled as §§ 67-4901 to 67-4917, 67-4918 to 67-4922, and 67-4923 to 67-4926. Probably, the reference should be to “this chapter,” being chapter 49, title 67, Idaho Code.

§ 67-4922. Submission of proposition to electorate. — Whenever any board authorized to levy and collect property taxes shall, by resolution, determine that the interest of said district and the public interest or necessity demand the acquisition, construction, installation or completion of any works or other improvements or facilities, or the making of any contract with the United States or other persons or corporations, public or private, municipalities, or governmental subdivisions, to carry out the objects or purposes of said district, requiring the creation of an indebtedness of seventy-five thousand dollars (\$75,000) or more, and in any event when the indebtedness will exceed the income and revenue provided for the year, said board shall order the submission of the proposition of issuing such obligations or bonds, or creating other indebtedness to the qualified electors of the district at an election held for that purpose. The declaration of public interest or necessity herein required and the provision for the holding of such election may be included within one and the same resolution, which resolution, in addition to such declaration of public interest or necessity, shall recite the objects and purposes for which the indebtedness is proposed to be incurred, the estimated cost of the works or improvements, as the case may be, the amount of principal of the indebtedness to be incurred therefor, and the maximum rate of interest to be paid on such indebtedness. Such resolution shall also fix the date upon which such election shall be held, subject to the provisions of section 34-106, Idaho Code, and the manner of holding the same in accordance with the provisions of title 34, Idaho Code, and the method of voting for or against the incurring of the proposed indebtedness. Such resolution shall direct the county clerk to designate the polling place or places, and appoint judges of each polling place.

History.

1959, ch. 137, § 22, p. 299; am. 1974, ch. 139, § 3, p. 1343; am. 1987, ch. 70, § 14, p. 129; am. 1995, ch. 118, § 93, p. 417; am. 2009, ch. 341, § 150, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in the first sentence, substituted “collect property taxes” for “collect ad valorem taxes”; in the third sentence, inserted “in accordance with the provisions of title 34, Idaho Code”; and rewrote the last sentence, which formerly read: “Such resolution shall also fix the compensation to be paid the officers of the election and shall designate the polling place or places, and shall appoint, for each polling place from the electors of the district, the officers of such election, consisting of three (3) judges, one (1) of whom shall act as clerk.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 67-4922A. Leasing of land and improvements. — No provision of chapter 49, title 67, Idaho Code, shall be construed to prevent the board from entering into a lease for improvements and for real estate for any period in their discretion, not to exceed thirty (30) years, and the board may contract for the leasing of improvements to be constructed upon premises owned by the district or otherwise, and the contract may also provide that at the expiration of the term of the lease, upon full performance of such lease by the district, the improvements and/or real estate, or so much thereof as is leased, may become the property of the district.

History.

I.C., § 67-4922A, as added by 1978, ch. 276, § 7, p. 667; am. 1987, ch. 70, § 15, p. 129.

§ 67-4923. Notice of election. — The board of a district authorized to levy and collect property taxes shall prescribe the form of the notice of election, and direct the publication of the same, the first publication of said notice to be as prescribed in chapter 14, title 34, Idaho Code.

History.

1959, ch. 137, § 23, p. 299; am. 1987, ch. 70, § 16, p. 129; am. 1995, ch. 118, § 94, p. 417; am. 2009, ch. 341, § 151, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, substituted “collect property taxes” for “collect ad valorem taxes” and “said notice to be as prescribed in chapter 14, title 34, Idaho Code” for “said notice to be not less than twelve (12) days prior to the election and the second notice shall be not less than five (5) days prior to the election.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 67-4924. Conduct of election — Canvass of returns. — The county clerk shall conduct the election in the manner prescribed by the provisions of chapter 14, title 34, Idaho Code, and the returns thereof shall be canvassed and the results certified by the county clerk who shall report the results to the district.

History.

1959, ch. 137, § 24, p. 299; am. 1987, ch. 70, § 17, p. 129; am. 1995, ch. 118, § 95, p. 417; am. 2009, ch. 341, § 152, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 67-4925. Effect of election — Subsequent elections. — In the event that it shall appear from said returns that the necessary percentage (as now specified by the constitution of the state of Idaho or as the same may hereafter be amended) of said qualified electors of the district authorized to levy and collect ad valorem taxes who shall have voted on any proposition submitted hereunder at such election voted in favor of such proposition, the district shall thereupon be authorized to incur such indebtedness or obligations, enter into such contract, or issue and sell such bonds of the district, as the case may be, all for the purpose or purposes and object or objects provided for in the proposition submitted hereunder and in the resolution therefor, and in the amount so provided and at a rate of interest not exceeding the rate of interest recited in such resolution. Submission of the proposition of incurring such obligation or bonded or other indebtedness at such an election shall not prevent or prohibit submission of the same or other propositions at subsequent election or elections called for such purpose.

History.

1959, ch. 137, § 25, p. 299; am. 1978, ch. 276, § 8, p. 667; am. 1987, ch. 70, § 18, p. 129.

STATUTORY NOTES

Cross References.

Limitations on county and municipal indebtedness, Idaho [Const.](#), [Art. VIII](#), § 3.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Section 9 of S.L. 1978, ch. 276 read: “Nothing contained herein shall invalidate or affect districts heretofore created by authority of chapter 49, title 67, Idaho Code, but any such existing district may by resolution of its board of directors change its existing name to a name authorized by this act,

a copy of which resolution shall be filed with the clerk of the district court which approved the organization of such district.”

§ 67-4926. Correction of faulty notices. — In any and every case where a notice is provided for in this act, if the court finds for any reason that due notice was not given, the court shall not thereby lose jurisdiction, and the proceeding in question shall not thereby be void or be abated, but the court shall in that case order due notice to be given and shall continue the hearing until such time as notice shall be properly given, and thereupon shall proceed as though notice has [had] been properly given in the first instance.

History.

1959, ch. 137, § 26, p. 299.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1959, Chapter 137, which is compiled as §§ 67-4901 to 67-4917, 67-4918 to 67-4922, and 67-4923 to 67-4926. Probably, the reference should be to “this chapter,” being chapter 49, title 67, Idaho Code.

The bracketed insertion near the end of the section was added by the compiler to correct the syntax of the sentence.

Section 27 of S.L. 1959, ch. 137 read: “If it should be judicially determined that any part of this act is invalid or unenforceable, such determination shall not affect the remaining parts, it being the intention to make this act and all of its parts severable.”

Effective Dates.

Section 28 of S.L. 1959, ch. 137 declared an emergency. Approved March 12, 1959.

**§ 67-4927. Share of liquor fund allotted to auditorium districts.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1974, ch. 139, § 4, was repealed by S.L. 1975, ch. 160, § 1.

§ 67-4928. Elections — Validation of acts. — Whenever any auditorium district organized under the provisions of chapter 49, title 67, Idaho Code, shall have failed to hold any election provided for in section 67-4911, Idaho Code, for the election of a member or members of the board of directors, the board of directors of said district may order an election to be held, subject to the provisions of section 34-106, Idaho Code, in said district for such purpose at such time as may be fixed by resolution of the board.

Whenever any auditorium district has been heretofore created pursuant to the provisions of chapter 49, title 67, Idaho Code, all proceedings had in connection with the creation of such district and the organization of the governing body and all acts and proceedings heretofore taken by such district or its governing body are hereby validated, ratified and declared to be binding and effective in accordance with their terms, notwithstanding any failure to have held and conducted any election of members of the board of directors of said district.

History.

I.C., § 67-4928, as added by S.L. 1974, ch. 139, § 5, p. 1343; am. 1995, ch. 118, § 96, p. 417.

§ 67-4929. Inclusion or exclusion — Election procedure. — Whenever under the provisions of sections 67-4918 and 67-4919, Idaho Code, owners or owners in fee of any real property have petitioned for inclusion or exclusion of property within the district, and the petition has been denied, the petitioners shall be entitled to an election as provided in this section:

(a) A petition may be filed with the county commissioners and shall be signed by not less than eighty percent (80%) of the qualified electors resident within the boundaries of the area proposed to be included or excluded.

(b) Within thirty (30) days after the filing of such petition, the county commissioners shall determine whether or not the same substantially complies with the requirements of this section. If the county commissioners find that there has not been substantial compliance with such requirements, they shall enter an order to that effect specifying the particular deficiencies and dismissing the petition. If the county commissioners find that there has been substantial compliance with such requirements, the county commissioners shall forthwith enter an order to the effect that the question of the inclusion or exclusion of property within the district be placed on the ballot at the next county general election.

(c) If the county commissioners order a question to be placed on the ballot as provided in this section, such election shall be conducted and notice thereof given by the county clerk in accordance with the provisions of title 34, Idaho Code.

(d) Immediately after such election, the county commissioners shall canvass the vote as provided in chapter 12, title 34, Idaho Code. If one-half (1/2) or more of the votes cast at such election within the district are in favor of allowing the inclusion or exclusion, the county commissioners shall enter an order so finding and declaring that the boundaries of such district are revised as provided by the election. The county commissioners shall cause one (1) certified copy of such order to be filed in the office of the county recorder of such county. Immediately upon the entry of such order, the change in boundaries so ordered shall be complete.

(e) After such election, the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number or qualifications of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of the inclusion or exclusion of such property after six (6) months has expired from the date of entering the order declaring the change in boundaries of such district.

(f) The provisions of [section 67-4920, Idaho Code](#), relating to liability for indebtedness of included or excluded property of a district authorized to levy and collect property taxes shall apply to property included or excluded as provided in this section.

History.

[I.C., § 67-4929](#), as added by 1975, ch. 154, § 1, p. 395; am. 1987, ch. 70, § 19, p. 129; am. 2009, ch. 341, § 153, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in subsection (c), substituted “notice thereof given by the county clerk in accordance with the provisions of title 34, Idaho Code” for “notice thereof given as nearly as practicable in accordance with the manner of general elections in this state”; in subsection (d), combined and rewrote the first two sentences, which formerly read: “Immediately after such election, the judges at such election shall forward the ballots and results of such election to the clerk. The county commissioners shall canvass the vote within ten (10) days after such election”; and, in subsection (f), substituted “collect property taxes” for “collect ad valorem taxes.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 67-4930. Dissolution of district — Procedure. — An auditorium district may be dissolved as follows:

(a) Any person or persons may file a petition for the dissolution of an auditorium district with the clerk. Such petition which may be in one (1) or more papers, shall state the name of the district and shall be signed by not less than three thousand (3,000) qualified electors resident within the boundaries of the district.

(b) Within thirty (30) days after the filing of such petition, the county commissioners shall determine whether or not the same substantially complies with the requirements of this section. If the county commissioners find that there has not been substantial compliance with such requirements, they shall enter an order to that effect specifying the particular deficiencies and dismissing the petition. If the county commissioners find that there has been substantial compliance with such requirements, the county commissioners shall forthwith enter an order to that effect and calling an election upon the dissolution of such district to be held at the same time as the next county general election, as provided in this section.

(c) If the county commissioners order an election as provided in this section, such election shall be conducted and notice thereof given by the county clerk in accordance with the provisions of title 34, Idaho Code.

(d) Immediately after such election, the county commissioners shall canvass the vote as provided in chapter 12, title 34, Idaho Code. If one-half (1/2) or more of the votes cast at such election are against the dissolution of such district, the county commissioners shall enter an order so finding and declaring that such district shall not be dissolved. If more than one-half (1/2) of the votes cast at such election are in favor of dissolving such district, the county commissioners shall enter an order so finding and declaring such district duly dissolved. The county commissioners shall cause one (1) certified copy of such order to be filed in the office of the county recorder of such county. Immediately upon the entry of such order, the dissolution of such district shall be complete.

(e) Upon such dissolution being complete, title to all property of the dissolved district shall vest in the county where such property is situated. The county commissioners shall then: sell and dispose thereof in the manner provided by law for the sale or disposition of county property; apply the proceeds thereof to pay any lawful claims against the dissolved district, if any; and apply the balance remaining, if any, to any public purpose within the county.

(f) When the boundaries of the district lie in two (2) or more counties, the county commissioners of each county shall act separately in the election and dissolution of that part of the district contained in their county but the county commissioners of each such county shall meet together before calling such election and provide for uniform proceedings in each county. If there is any balance remaining after sale and disposition of the property of such dissolved district, it shall be prorated among such counties in proportion to each county's share of the total assessed valuation of such dissolved district for the preceding calendar year.

(g) After such election, the validity of the proceedings hereunder shall not be affected by any defect in the petition or in the number or qualifications of the signers thereof, and in no event shall any action be commenced or maintained or defense made affecting the validity of the dissolution of such district after six (6) months has expired from the date of entering the order declaring the dissolution of such district.

History.

I.C., § 67-4930, as added by 1975, ch. 154, § 2, p. 395; am. 2009, ch. 341, § 154, p. 993.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 341, in subsection (c), substituted “notice thereof given by the county clerk in accordance with the provisions of title 34, Idaho Code” for “notice thereof given as nearly as practicable in accordance with the manner of general elections in this state”; in subsection (d), combined and rewrote the first two sentences, which formerly read: “Immediately after such election, the judges at such election shall forward

the ballots and results of such election to the clerk. The county commissioners shall canvass the vote within ten (10) days after such election”; and in the first sentence in subsection (e), substituted “title to all property” for “title of all property.”

Effective Dates.

Section 161 of S.L. 2009, ch. 341 provided that the act should take effect on and after January 1, 2011.

§ 67-4931. Application of campaign report law to auditorium district elections. [Repealed.]

Repealed by S.L. 2019, ch. 288, § 25, effective January 1, 2020. See § 67-6601 et seq.

History.

I.C., § 67-4931, as added by 2001, ch. 258, § 8, p. 926.

Chapter 50 COMMISSION ON AGING

Sec.

67-5001. Creation of commission on aging — Composition — Appointment.

67-5002. Organization — Meetings — Quorum — Compensation — Expenses.

67-5003. Powers and duties of commission.

67-5004. Administrator — Appointment and term.

67-5005. Legislative intent.

67-5006. Definitions.

67-5007. Grants to and contracts with local area agencies.

67-5008. Programs for older persons.

67-5009. Office of ombudsman for the elderly.

67-5010. Grants or contracts for demonstration projects.

67-5011. Adult protective services.

§ 67-5001. Creation of commission on aging — Composition — Appointment. — There is hereby established in the executive office of the governor the Idaho commission on aging, hereafter referred to as the “commission,” which shall have the duties, powers, and authorities as provided in this act. The board of commissioners shall consist of seven (7) members to be appointed by the governor of the state of Idaho, hereafter referred to singly as a “commissioner” or collectively as “commissioners,” who shall hold office during the pleasure of the governor and who shall be subject to removal by the governor. No commissioner shall hold any other elective or appointive office, state, county or municipal, or any office in any political party organization. Not more than four (4) commissioners shall at any time belong to the same political party. At least four (4) commissioners must be age sixty (60) years or older. Each of the commissioners shall be a citizen of the United States, and of the state of Idaho, and shall be appointed to assure appropriate geographic representation of the state of Idaho.

The commissioners shall be appointed for a term of four (4) years; provided, that in the case of death of any commissioner, or his or her removal from office as hereinbefore provided, the governor shall appoint a successor from the same geographic area. All commissioners shall be appointed for a term of four (4) years on a staggered basis. No commissioner shall serve more than two (2) consecutive terms, except that a commissioner appointed to fill an unexpired term may be appointed to two (2) additional full terms.

History.

I.C., § 67-5001, as added by 1995, ch. 189, § 2, p. 676; am. 2002, ch. 47, § 1, p. 107.

STATUTORY NOTES

Prior Laws.

Former § 67-5001, which comprised **I.C., § 67-5001**, as added by 1976, ch. 188, § 1, p. 679, was repealed by S.L. 1995, ch. 189, § 1, effective July 1, 1995.

Compiler's Notes.

The term “this act” in the first sentence in the first paragraph refers to S.L. 1995, Chapter 189, which is compiled as §§ 67-5001 to 67-5004 and 67-5007 to 67-5010.

§ 67-5002. Organization — Meetings — Quorum — Compensation — Expenses. — (1) The commissioners shall oversee the duties, powers and authorities of the commission.

(2) The commissioners shall elect a chairman and vice-chairman at its first meeting. Thereafter, the chairman and vice-chairman shall be elected during the first meeting of each calendar year. The commissioners shall meet at least once every three (3) months and at such times as may be called by the chairman. A majority of the commissioners shall constitute a quorum for the transaction of business, or for the exercise of any power.

(3) Each commissioner shall be compensated as provided in [section 59-509\(h\), Idaho Code](#).

History.

[I.C., § 67-5002](#), as added by 1995, ch. 189, § 2, p. 676; am. 2002, ch. 47, § 2, p. 107.

STATUTORY NOTES

Prior Laws.

Former § 67-5002, which comprised [I.C., § 67-5002](#), as added by 1976, ch. 188, § 1, p. 679, was repealed by S.L. 1995, ch. 189, § 1, effective July 1, 1995.

Another former § 67-5002 which comprised S.L. 1963, ch. 3, § 1, p. 6 was repealed by S.L. 1974, ch. 22, § 2.

§ 67-5003. Powers and duties of commission. — The Idaho commission on aging administrator and staff shall carry out the following powers and duties, in consultation with the commissioners:

(1) Serve as an advocate within state government and the community for older Idahoans;

(2) Serve as an advisory body regarding state legislative issues affecting older Idahoans;

(3) In accordance with chapter 52, title 67, Idaho Code, promulgate, adopt, amend and rescind rules related to programs and services administered by the commission;

(4) Enter into funding agreements as grants and contracts within the limits of appropriated funds to carry out programs and services for older Idahoans;

(5) Conduct public hearings and evaluations to determine the health and social needs of older Idahoans, and determine the public and private resources to meet those needs;

(6) Designate “planning and service areas” and area agencies on aging in accordance with the older Americans act and federal regulations promulgated thereunder. The commission shall review the boundaries of the “planning and service areas” periodically and shall change them as necessary;

(7) On or before the first day of December in 1995 and each year thereafter, submit a report to the governor and the legislature of its accomplishments and recommendations for improvements of programs and services for older Idahoans;

(8) Administer and perform any other related functions or activities assigned to the commission by the governor.

History.

I.C., § 67-5003, as added by 1995, ch. 189, § 2, p. 676; am. 1999, ch. 13, § 1, p. 19; am. 2002, ch. 47, § 3, p. 107.

STATUTORY NOTES

Prior Laws.

Former § 67-5003, which comprised I.C., § 67-5003, as added by 1976, ch. 188, § 1, p. 679; am. 1982, ch. 67, § 1, p. 131, was repealed by S.L. 1995, ch. 189, § 1, effective July 1, 1995.

Another former § 67-5003, which comprised S.L. 1963, ch. 3, § 3, p. 6, was repealed by S.L. 1974, ch. 22, § 1.

Federal References.

The older americans act, referred to in paragraph (6) of this section, is compiled as 42 U.S.C.S. § 3001 et seq.

§ 67-5004. Administrator — Appointment and term. — An administrator of the Idaho commission on aging shall be appointed by the governor. The appointment shall be subject to confirmation by the senate. The administrator may be removed by the governor at will. The administrator's compensation shall be fixed by the governor within the limits of appropriations available to the office and based upon an annual performance evaluation by the commission.

History.

I.C., § 67-5004, as added by 1995, ch. 189, § 2, p. 676; am. 2001, ch. 87, § 1, p. 223; am. 2002, ch. 47, § 4, p. 107.

STATUTORY NOTES

Prior Laws.

Former § 67-5004, which comprised **I.C., § 67-5004**, as added by 1976, ch. 188, § 1, p. 679; am. 1980, ch. 247, § 86, p. 582; am. 1982, ch. 67, § 2, p. 131; am. 1990, ch. 30, § 1, p. 45, was repealed by S.L. 1995, ch. 189, § 1, effective July 1, 1995.

Another former § 67-5004 which comprised S.L. 1963, ch. 3, § 4, p. 6, was repealed by S.L. 1974, ch. 22, § 1.

§ 67-5005. Legislative intent. — The legislature hereby finds and recognizes the need to provide basic necessities to its older people in their later years and particularly in providing efficient community services, including access transportation, adequate nutrition, in-home services, and adult day care, designed to permit its older people to remain independent and to be able to avoid institutionalization; and that these services be provided in a coordinated manner and be readily available when needed and accessible to all older people.

This act shall be known as the “Idaho Senior Services Act.”

History.

I.C., § 67-5005, as added by 1976, ch. 305, § 1, p. 1046; am. 1982, ch. 67, § 3, p. 131; am. 1989, ch. 117, § 1, p. 262.

STATUTORY NOTES

Prior Laws.

Former §§ 67-5005 to 67-5008 which comprised S.L. 1963, ch. 3, § 5 to 8, p. 6 were repealed by S.L. 1974, ch. 22, § 1.

Compiler’s Notes.

The term “this act” in the last paragraph refers to S.L. 1982, Chapter 67, which is compiled as §§ 67-5005 to 67-5009. Probably, the reference should be to “this chapter,” being chapter 50, title 67, Idaho Code.

§ 67-5006. Definitions. — For the purposes of this chapter, the following terms are defined as follows:

(1) “Transportation” — services designed to transport older persons to and from community facilities and resources for the purpose of applying for and receiving services, reducing isolation, or otherwise promoting independent living, but not including a direct subsidy for an overall transit system or a general reduced fare program for a public or private transit system.

(2) “In-home services” — provide care for older persons in their own homes and help them maintain, strengthen, and safeguard their personal functioning in their own homes. These services shall include, but not be limited to case management, homemakers, chores, telephone reassurance, home delivered meals, friendly visiting and shopping assistance, and in-home respite care.

(3) “Congregate meals” — meals prepared and served in a congregate setting which provide older persons with assistance in maintaining a well-balanced diet, including diet counseling and nutrition education.

(4) “Older persons” — individuals sixty (60) years of age or older.

(5) “Adult day care” — a structured day program which provides individually planned care, supervision, social interaction and supportive services for frail older persons in a protective setting, and provides relief and support for caregivers.

(6) “Information and assistance service” means a service for older individuals that:

- (a) Provides the individuals with current information on opportunities and services available to the individuals within their communities, including information relating to assistive technology;
- (b) Assesses the problems and capacities of the individuals;
- (c) Links the individuals to the opportunities and services that are available;

(d) To the maximum extent practicable, ensures that the individuals receive the services needed by the individuals, and are aware of the opportunities available to the individuals, by establishing adequate follow-up procedures; and

(e) Serves the entire community of older individuals, particularly:

(i) Older individuals with the greatest social need;

(ii) Older individuals with the greatest economic need; and

(iii) Older individuals at risk for institutional placement.

(7) “Information and referral” means and includes information relating to assistive technology.

(8) “Aging and disability resource center” means an entity established by a state as part of the state system of long-term care, to provide a coordinated system for providing:

(a) Comprehensive information on the full range of available public and private long-term care programs, options, service providers and resources within a community, including information on the availability of integrated long-term care;

(b) Personal counseling to assist individuals in assessing their existing or anticipated long-term care needs, and developing and implementing a plan for long-term care designed to meet their specific needs and circumstances; and

(c) Consumers’ access to the range of publicly supported long-term care programs for which consumers may be eligible, by serving as a convenient point of entry for such programs.

(9) “Case management service”:

(a) Means a service provided to an older individual at the direction of the older individual or a family member of the individual:

(i) By an individual who is trained or experienced in the case management skills that are required to deliver the services and coordination described in paragraph (b) of this subsection; and

- (ii) To assess the needs and to arrange, coordinate and monitor an optimum package of services to meet the needs of the older individual; and
- (b) Includes services and coordination such as:
 - (i) Comprehensive assessment of the older individual, including the physical, psychological and social needs of the individual;
 - (ii) Development and implementation of a service plan with the older individual to mobilize the formal and informal resources and services identified in the assessment to meet the needs of the older individual, including coordination of the resources and services:
 - 1. With any other plans that exist for various formal services such as hospital discharge plans; and
 - 2. With the information and assistance services provided herein;
 - (iii) Coordination and monitoring of formal and informal service delivery, including coordination and monitoring to ensure that services specified in the plan are being provided;
 - (iv) Periodic reassessment and revision of the status of the older individual with:
 - 1. The older individual; or
 - 2. If necessary, a primary caregiver or family member of the older individual; and
 - (v) In accordance with the wishes of the older individual, advocacy on behalf of the older individual for needed services or resources.

History.

I.C., § 67-5006, as added by 1976, ch. 305, § 2, p. 1046; am. 1982, ch. 67, § 4, p. 131; am. 1989, ch. 117, § 2, p. 262; am. 2011, ch. 142, § 1, p. 402.

STATUTORY NOTES

Prior Laws.

Former § 67-5006 was repealed. See Prior Laws, § 67-5005.

Amendments.

The 2011 amendment, by ch. 142, substituted “this chapter” for “this act” in the introductory language and added subsections (6) through (8).

§ 67-5007. Grants to and contracts with local area agencies. — The commission shall, based on the recommendations of the local area councils on aging, enter into funding agreements as grants or contracts with designated local area agencies, as provided by the Older Americans Act of 1965, as amended, for the purpose of the agencies issuing contracts at the local level to provide the services listed in section 67-5008, Idaho Code. Such grants or contracts shall be subject to performance and financial audit by the agency in conformance with state practices and statutes.

History.

I.C., § 67-5007, as added by 1976, ch. 305, § 3, p. 1046; am. 1982, ch. 67, § 5, p. 131; am. 1995, ch. 189, § 3, p. 676; am. 1999, ch. 13, § 2, p. 19.

STATUTORY NOTES

Prior Laws.

Former § 67-5007 was repealed. See Prior Laws, § 67-5005.

Federal References.

The Older Americans Act of 1965, referred to in this section, is compiled as 42 U.S.C.S. § 3001 et seq.

§ 67-5008. Programs for older persons. — The commission shall upon reviewing recommendations from local area councils on aging, as required by the Older Americans Act of 1965, as amended, allocate to local designated area agencies grants or contracts for the following purposes:

- (1) Transportation — For operating expenses only.
- (2) Congregate meals — For direct costs to provide nutritionally balanced meals to older persons at congregate meal sites.
- (3) In-home services — For direct provision of case management, homemaker, chore, telephone reassurance, home delivered meals, friendly visiting, shopping assistance, in-home respite and other in-home services to older persons living in noninstitutional circumstances. Fees for specific services shall be based upon a variable schedule, according to rules established by the Idaho commission on aging, based upon ability to pay for such services.
- (4) Adult day care — For direct services to older persons and their caregivers.
- (5) Ombudsman — For provision of ombudsman services as described in [section 67-5009, Idaho Code](#).

History.

[I.C., § 67-5008](#), as added by 1976, ch. 305, § 4, p. 1046; am. 1982, ch. 67, § 6, p. 131; am. 1989, ch. 117, § 3, p. 262; am. 1995, ch. 189, § 4, p. 676; am. 1999, ch. 13, § 3, p. 19; am. 2000, ch. 34, § 1, p. 62; am. 2006, ch. 201, § 1, p. 617.

STATUTORY NOTES

Prior Laws.

Former § 67-5008 was repealed. See Prior Laws, § 67-5005.

Amendments.

The 2006 amendment, by ch. 201, added subsection (5).

Federal References.

The Older Americans Act of 1965, referred to in the introductory paragraph, is compiled as [42 U.S.C.S. § 3001 et seq.](#)

Effective Dates.

Section 2 of S.L. 2000, ch. 34 provided that the act shall be in full force and effect on and after July 1, 2000.

§ 67-5009. Office of ombudsman for the elderly. — The office of ombudsman for the elderly is hereby created within the commission. The ombudsman shall be able to independently make determinations and establish positions of the office without necessarily representing the determinations or positions of the commission. The ombudsman shall be responsible for receiving, investigating and resolving or closing complaints made by or on behalf of residents of long-term care facilities or persons aged sixty (60) years or older living in the community. No representative of the office shall be liable for the good faith performance of official duties, and willful interference with representatives of the office is unlawful. Long-term care facilities are prohibited from interference, reprisals or retaliation against a resident, employee or other person filing a complaint with, or furnishing information to, the office.

For the purposes of implementing the provisions of this section, the commission is hereby authorized as follows:

The administrator shall hire the state ombudsman for the elderly who shall be a person with the necessary educational background commensurate with the duties and responsibilities of the office of ombudsman and shall be a classified employee subject to the provisions of chapter 53, title 67, Idaho Code.

The ombudsman may delegate to designated local ombudsmen any duties deemed necessary to carry out the purposes of the provisions of this section.

The ombudsman shall establish procedures for receiving and processing complaints, conducting investigations and reporting his findings. He shall have jurisdiction to investigate administrative acts or omissions of long-term care facilities or state or county departments or agencies providing services to older people. An administrative act of a long-term care facility or state or county department or agency may become an appropriate subject for the ombudsman to investigate under certain circumstances. For example, the ombudsman may investigate such an act if it might be contrary to law, unreasonable, unfair, oppressive, capricious or discriminatory. The ombudsman may make a finding for an appropriate resolution to the subject matter of the investigation.

The ombudsman shall investigate any complaint that he determines to be an appropriate subject for investigation under this section and will work to resolve the complaint to the satisfaction of the resident or the resident's representative.

In an investigation of any complaint or administrative act of any long-term care facility or state or county department or agency providing services to older people, the ombudsman may undertake, but not be limited to, any of the following actions:

(a) Make the necessary inquiries and obtain such information he deems necessary.

(b) Hold private hearings.

(c) Enter during regular business hours, a state or county department or agency's premises, or enter at any time a long-term care facility.

Following the investigation and upon his determination that particular subject matter should be further considered by the long-term care facility or state or county department or agency, an administrative act should be modified or canceled, a statute or regulation on which an administrative act is based should be altered, reasons should be given for an administrative act, or some other action should be taken by a long-term care facility or state or county department or agency, he shall report his opinions and recommendations to the respective parties. The ombudsman may request the parties affected by such opinions or recommendations to notify him within the specified time of any action taken by such parties on his recommendation.

The ombudsman shall notify, in writing or verbally, the resident or the resident's representative within a reasonable time from the date the investigation is terminated of any actions taken by him and the long-term care facility, or state or county department or agency to resolve any issues raised by the complaint.

The ombudsman, on December 1 of each year, shall submit to the governor, the speaker of the house, president of the senate, the department of health and welfare division of licensing and certification, the president of the Idaho hospital association and the president of the Idaho health care association a report of the activities of the ombudsman for the elderly

during the prior fiscal year. This report shall include, but not be limited to, the number and general patterns of complaints received by the ombudsman, the action taken on such complaints, the results of such action, and any opinions or recommendations which further the state's capability in providing for statutory resolution of complaints.

Nothing in this section shall be construed to be a limitation of the powers and responsibilities assigned by law to other state or county departments or agencies.

Records obtained by the ombudsman shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

History.

I.C., § 67-5009, as added by 1988, ch. 263, § 1, p. 517; am. 1990, ch. 213, § 96, p. 480; am. 1995, ch. 189, § 5, p. 676; am. 1999, ch. 13, § 4, p. 19; am. 2001, ch. 87, § 2, p. 223; am. 2015, ch. 141, § 174, p. 379; am. 2018, ch. 56, § 2, p. 141.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the seventh and last paragraphs.

The 2018 amendment, by ch. 56, in the first paragraph, inserted the present second sentence and inserted “interference” and “or other person” in the last sentence; added “and will work to resolve the complaint to the satisfaction of the resident or the resident’s representative” at the end of the sixth paragraph; deleted the former seventh paragraph, which read: “When the ombudsman investigates a complaint, he shall notify the complainant, if any, of the investigation and shall also notify the long-term care facility or the state or county department or agency affected by the investigation of his intent to investigate. However, if no investigation takes place, he shall inform the complainant of the reasons therefor. Records obtained by the ombudsman shall be subject to disclosure according to chapter 1, title 74, Idaho Code”; in paragraph (c) of the present seventh paragraph, deleted “long-term care facility or” preceding “state or county” and added “or enter at any time a long-term care facility” at the end; deleted the former last

sentence in the present eighth paragraph, which read: “Following an investigation, the ombudsman shall consult with the particular parties before issuing any opinion or recommendation that is critical to such parties”; and substituted “notify, in writing or verbally, the resident or the resident’s representative” for “notify the complainant in writing” in the present ninth paragraph.

Compiler’s Notes.

For more information on the department of health and welfare division of licensing and certification, referred to in the tenth paragraph, see <https://healthandwelfare.idaho.gov/Medical/LicensingCertification/tabid/124/Default.aspx>.

For further information on the Idaho hospital association, referred to in the tenth paragraph, see <https://teamiha.org>.

For further information on the Idaho health care association, referred to in the tenth paragraph, see <http://www.idhca.org>.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993, and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 67-5010. Grants or contracts for demonstration projects. — The commission may, based on needs identified in Idaho's community based service system for the elderly through its state planning process and at its discretion, enter into grants or contracts with area agencies or service providers to demonstrate new or more effective methods of delivering the services listed in section 67-5008, Idaho Code. These one (1) time demonstration grants or contracts will not adversely affect the grants or contracts provided to local area agencies on aging described in section 67-5007, Idaho Code.

History.

I.C., § 67-5010, as added by 1989, ch. 117, § 4, p. 262; am. 1995, ch. 189, § 6, p. 676; am. 1999, ch. 13, § 5, p. 19.

§ 67-5011. Adult protective services. — Adult protective services for vulnerable adults shall be administered through the commission. Adult protective services are specialized social services directed toward assisting vulnerable adults who are unable to manage their own affairs, carry out the activities of daily living or protect themselves from abuse, neglect or exploitation. For the purposes of implementing the provisions of this section, the commission shall assume all responsibilities cited in chapter 53, title 39, Idaho Code, entitled “adult abuse, neglect and exploitation act.”

History.

I.C., § 67-5011, as added by 1996, ch. 78, § 10, p. 246; am. 2019, ch. 43, § 9, p. 116.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 43, substituted “protective” for “protection” in the section heading and in the two first sentences and deleted the former third sentence, which read: “Provision of services may be accomplished by contracting with each of the commission’s local area agencies on aging”.

Chapter 51

JURISDICTION IN INDIAN COUNTRY

Sec.

67-5101. State jurisdiction for civil and criminal enforcement concerning certain matters arising in Indian country.

67-5102. Additional state jurisdiction with consent of tribe governing body.

67-5103. Matters excepted from state jurisdiction.

§ 67-5101. State jurisdiction for civil and criminal enforcement concerning certain matters arising in Indian country. — The state of Idaho, in accordance with the provisions of 67 Statutes at Large, page 589 (Public Law 280) hereby assumes and accepts jurisdiction for the civil and criminal enforcement of state laws and regulations concerning the following matters and purposes arising in Indian country located within this state, as Indian country is defined by title 18, United States Code 1151 [18 U.S.C. § 1151], and obligates and binds this state to the assumption thereof:

A. Compulsory school attendance

B. Juvenile delinquency and youth rehabilitation

C. Dependent, neglected and abused children

D. Insanities and mental illness

E. Public assistance

F. Domestic relations

G. Operation and management of motor vehicles upon highways and roads maintained by the county or state, or political subdivisions thereof.

History.

1963, ch. 58, § 1, p. 224.

STATUTORY NOTES

Federal References.

Public Law 280, referred to near the beginning of the introductory paragraph, is August 15, 1953, **Public Law 83-280**, presently codified as **18 USCS § 1162**, **25 USCS §§ 1321 to 1325**, and **28 USCS § 1360**.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Community property division.

Construction.

Control of Indian land by state.

Controversy involving nonIndian.

Dependent, neglected and abused children.

Divorce action.

Driving while under the influence.

Jurisdiction of courts on Indian reservations.

Motor vehicles.

Tort action occurring off of reservation.

Termination of parental rights.

Community Property Division.

The exceptions to state jurisdiction in 25 U.S.C. § 1322(b) and § 67-5103 do not prevent the courts of this state from requiring that one party to a marriage recompense the other party for his or her share of the community contributions that have gone into property that is held in trust or subject to a restraint on alienation by the federal government. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982), overruled on other grounds, *Coeur d'Alene Tribe v. Johnson*, 162 Idaho 754, 405 P.3d 13 (2017).

State courts have the power in divorce actions to award a nonIndian spouse recompense for his or her portion of the community contribution used to purchase trust property located within the boundaries of an Indian reservation. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982), overruled on other grounds, *Coeur d'Alene Tribe v. Johnson*, 162 Idaho 754, 405 P.3d 13 (2017).

Construction.

This section must be narrowly construed so as to minimize erosion of tribal sovereignty. *State v. Smith*, 127 Idaho 771, 906 P.2d 141 (Ct. App. 1995).

Control of Indian Land by State.

Fact that prior to enactment of this section there had been no amendment of Idaho [Const., Art. XXI, § 19](#) did not render this section invalid. While the Idaho Constitution may have provided for congressional control and jurisdiction over Indian lands, it did not, and could not, prohibit the ceding of part or all of such control and jurisdiction back to the states. Such ceding of partial jurisdiction and control was accomplished by the Congress, if the state would consent to accept such jurisdiction and control by legislative enactment. [State v. Marek, 112 Idaho 860, 736 P.2d 1314 \(1987\)](#).

The language of Congressional Act, P.L. 280 authorized the states to assume jurisdiction with respect to criminal offenses, and the language of this section provides that the state of Idaho assumed and accepted jurisdiction for “criminal enforcement of state laws.” [State v. Marek, 112 Idaho 860, 736 P.2d 1314 \(1987\)](#).

Under this provision the state did not assume jurisdiction over murder crimes or the execution of state court search warrants within Indian country. [State v. Mathews, 133 Idaho 300, 986 P.2d 323 \(1999\)](#), cert. denied, [528 U.S. 1168, 120 S. Ct. 1190, 145 L. Ed. 2d 1095 \(2000\)](#).

Controversy Involving Non-Indian.

The fact that an Indian is involved in a controversy, particularly a controversy involving a nonIndian, does not automatically strip the state of all power to deal with the controversy under state law, and a state court has such power unless the subject matter is within exclusive federal authority. [Sheppard v. Sheppard, 104 Idaho 1, 655 P.2d 895 \(1982\)](#).

Dependent, Neglected and Abused Children.

The language in this section contains no limitation to a particular statute or to the extant version of a statute at a particular time; rather, it embraces all state laws pertaining to dependent, neglected and abused children and thus, after 1963, it was within the state’s power to amend § 18-1501(1) by describing a more serious offense and by characterizing it as a felony with commensurately higher penalties. [State v. Marek, 116 Idaho 580, 777 P.2d 1253 \(Ct. App. 1989\)](#).

Felony injury to a child falls within the criminal jurisdiction granted by Congress under Public Law 280 and accepted by Idaho in 1963 through its

enactment of this chapter. *State v. Marek*, 116 Idaho 580, 777 P.2d 1253 (Ct. App. 1989).

Divorce Action.

Subsection F of this section authorizing state jurisdiction in “Domestic Relations” cases is sufficient to supply jurisdiction over a divorce action and the accompanying division of community property when one or both of the parties are reservation *Indians*. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982).

Where, in a divorce action between a husband and his Indian wife, there was no evidence to show that their joint cattle operation or their household goods were either trust property or subject to restraints on alienation imposed by the federal government, a state court was not prevented from considering and dividing those properties, even though they were within the boundaries of an Indian reservation. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982).

Driving While Under the Influence.

Subsection G provides for state jurisdiction over criminal enforcement of state laws concerning the operation of a motor vehicle on highways and roads maintained by the county or state; therefore, the state had jurisdiction over the defendant charged with operating a motor vehicle while under the influence of alcohol on a highway operated and maintained by the state. *State v. Michael*, 111 Idaho 930, 729 P.2d 405 (1986).

The Indian Country Crimes Act’s exclusion of the felony of aggravated driving while under the influence precludes it as a felony over which the federal government has retained exclusive jurisdiction; therefore, it does not prohibit the state from accepting jurisdiction in subsection G for punishment of criminal offenses relating to the operation of motor vehicles upon highways maintained by the state. *State v. Michael*, 111 Idaho 930, 729 P.2d 405 (1986).

Where, in prosecution of an Indian arrested within Indian country for driving under the influence of alcohol, the defendant failed to call to the court’s attention any theory of constitutional or federal law which would deny Congress the power to regulate the operation of motor vehicles by Indians while in Indian country — or to pass such regulatory power to the

states, the magistrate properly exercised jurisdiction over the action. *State v. Fanning*, 114 Idaho 646, 759 P.2d 937 (Ct. App. 1988).

Since prior to the enactment of this section the legislature enacted former § 49-352 which provided for a 90-day license suspension for failure to submit to a breath test, and where in 1984, the legislature repealed § 49-352 and enacted § 18-8002 which provided for a 180-day suspension period, the increased suspension period did not constitute a substantial change in the law or new assumption of jurisdiction requiring tribal consent; the state had previously assumed jurisdiction in this area of the law pursuant to Congress' consent in 1963, and further permission or consent from the Nez Perce Tribe, under 25 U.S.C.S. § 1321, is not required for enforcement of § 18-8002. *State v. McCormack*, 117 Idaho 1009, 793 P.2d 682 (1990).

A nonIndian driving under the influence on a road within the boundaries of a reservation is not committing a crime against an Indian or the general Indian populace. As such, the state of Idaho has jurisdiction to prosecute defendant. *State v. Snyder*, 119 Idaho 376, 807 P.2d 55 (1991).

The state had jurisdiction over an enrolled member of an Indian tribe for the offense of driving while under the influence of alcohol on public roads and highways within an Indian reservation located in the state of Idaho and the district court properly exercised jurisdiction over the matter. *State v. Warden*, 127 Idaho 763, 906 P.2d 133 (1995).

The word "upon" in subsection G does not limit the jurisdiction of state officials to enforce state traffic laws to the actual road right-of-way; thus, a police officer had the authority to arrest defendant in Indian country for the offense of driving under the influence on a public road. *State v. Barros*, 131 Idaho 379, 957 P.2d 1095 (1998).

Jurisdiction of Courts on Indian Reservations.

Because the state has the burden to establish its jurisdiction over an Indian in Indian country, and because jurisdiction exists only where the tribe consented, it follows that the state has the burden to establish that the tribe consented to its jurisdiction. *State v. Major*, 111 Idaho 410, 725 P.2d 115 (1986).

District courts have no jurisdiction of controversies arising on Indian reservations unless such jurisdiction has been conferred by the governing

bodies of the tribes occupying such reservations. *Boyer v. Shoshone-Bannock Indian Tribes*, 92 Idaho 257, 441 P.2d 167 (1968).

Motor Vehicles.

With regard to the operation of motor vehicles, occurring on an Indian reservation, the state's interests in maintaining traffic safety and protecting the traveling public, Indian and nonIndian alike, controls regardless of whether the motor vehicle is being operated on a road maintained by the state or a political subdivision. *State v. Snyder*, 119 Idaho 376, 807 P.2d 55 (1991).

In a prosecution against Indian tribe member for leaving the scene of an accident and for aggravated driving under the influence, where the defendant challenged the state's jurisdiction over a section of Interstate 95 that is within the boundaries of an Indian reservation, the trial court could have taken judicial notice of the "Official Highway Map" which the Idaho transportation department periodically issues; while these maps may not be conclusive on the subject, they are reliable authority that U.S. Highway 95 is one of the principal highways being maintained by the state as part of the state highway system. *State v. Smith*, 124 Idaho 671, 862 P.2d 1093 (Ct. App. 1993).

Under Idaho law, a traffic infraction is a violation of law which is criminal in nature, and pursuant to federal law and this section, the state had jurisdiction over tribal members such as the defendant for infractions occurring on state maintained highways located within the boundaries of an Indian reservation, and the officer had the right to identify the driver of the vehicle by requesting a driver's license, registration and proof of insurance. *State v. George*, 127 Idaho 693, 905 P.2d 626 (1995).

Defendant's contention that the offense of leaving the scene of an injury accident occurred after all operation of his motor vehicle had ceased, and therefore, the offense did not fall within the ambit of the state's jurisdiction under subsection G to enforce laws concerning "operation and management of motor vehicles," was unpersuasive, as wording of § 18-8007 makes it clear that it may be invoked only against a motor vehicle operator and only if the vehicle has been involved in an accident. *State v. Smith*, 127 Idaho 771, 906 P.2d 141 (Ct. App. 1995).

State's jurisdiction to enforce laws concerning the operation and management of motor vehicles on state roads does not encompass jurisdiction over possession of a controlled substance by an Indian while in a motor vehicle on a state highway on an Indian reservation. *State v. Ambro*, 142 Idaho 77, 123 P.3d 710 (Ct. App. 2005).

Defendant, a certified member of the Shoshone-Bannock tribes, was legally arrested and the district court of Bannock County has personal jurisdiction over him without the need for extradition, where the defendant was stopped for driving under the influence on an interstate highway within the boundaries on an Indian reservation. State and tribal police share concurrent jurisdiction at the place of the arrest. *State v. Beasley*, 146 Idaho 594, 199 P.3d 771 (Ct. App. 2008).

Tort Action Occurring Off of Reservation.

Where collision occurred between pick-up truck on interstate highway and cow which had wandered off Indian reservation onto highway, state had jurisdiction over tort action since it occurred off the reservation and there was more than a minimal contact between plaintiff citizen of Idaho and defendant stockmen's association composed entirely of Indians. *Odenwalt v. Zaring*, 102 Idaho 1, 624 P.2d 383 (1980).

Termination of Parental Rights.

Public Law 280 and this section constitute an exception to the Indian Child Welfare Act's, 25 U.S.C.S. § 1901 et seq., exclusive jurisdiction mandate. These statutes provide the state with concurrent jurisdiction over cases involving the termination of parental rights. *Doe v. Doe (In re Termination of Parental Rights of Doe)*, 158 Idaho 614, 349 P.3d 1205 (2015).

OPINIONS OF ATTORNEY GENERAL

Taxes.

The prohibition on taxation in § 67-5103 is limited to those lands for which alienability is restricted, as such it does not affect the ability of the state to tax reservation lands held in fee in Indians. OAG 96-2.

§ 67-5102. Additional state jurisdiction with consent of tribe governing body. — Additional state jurisdiction in criminal and civil causes of action may be extended to particular reservations or Indian country with the consent of the governing body of the tribe occupying the Indian country effected [affected] by the assumption of such additional jurisdiction. This may be achieved by negotiation with the tribe or by unilateral action by the tribe. In every case the extent of such additional jurisdiction shall be determined by a resolution of the tribal governing body and become effective upon the tribe's transmittal of the resolution to the attorney general of the state of Idaho. Such resolution may effectively accept jurisdiction as to any particular field of criminal or civil jurisdiction. All state jurisdiction extended by virtue of this act shall be concurrent (and not exclusive) with jurisdiction in the same matters existing in the tribes or the federal government.

History.

1963, ch. 58, § 2, p. 224.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq, Compiler's Notes.

The bracketed word "affected" in the first sentence was inserted by the compiler to correct the enacting legislation.

The term "this act" in the last sentence refers to S.L. 1963, Chapter 58, which is compiled as §§ 67-5101 to 67-5103.

The words enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Jurisdiction of courts on Indian reservations.

Waiver of jurisdiction.

Jurisdiction of Courts on Indian Reservations.

A district court has no jurisdiction of an action by a member of an Indian tribe to compel his seating on the tribal business council, to which he claims to have been elected, or to enforce his claim to emoluments of the office unless such jurisdiction has been conferred by the governing body of such tribe. *Boyer v. Shoshone-Bannock Indian Tribes*, 92 Idaho 257, 441 P.2d 167 (1968).

The tribal resolution which granted the state concurrent jurisdiction over the offenses of embezzlement, disturbing the peace, simple assault, kidnapping, vagrancy and receiving stolen property did not grant consent over a class of offenses which included grand theft by possession of stolen property. *State v. Major*, 111 Idaho 410, 725 P.2d 115 (1986).

Because the state has the burden to establish its jurisdiction over an Indian in Indian country, and because jurisdiction exists only where the tribe consented, it follows that the state has the burden to establish that the tribe consented to its jurisdiction. *State v. Major*, 111 Idaho 410, 725 P.2d 115 (1986).

Where there was a genuine issue as to whether the tribal housing authority had the power to consent to state jurisdiction over a dispute concerning a contract between a contractor and the tribal housing authority or whether the dispute was one that must be resolved in the tribal court, the issue was one that had to be initially considered by the tribal court; therefore, the action against the housing authority in the district court was dismissed without prejudice. *Snowbird Constr. Co. v. United States*, 666 F. Supp. 1437 (D. Idaho 1987).

Waiver of Jurisdiction.

Where a tribe had, in accordance with a compact entered into pursuant to this section, consented to and received the benefits of state law enforcement protection, it gave up its landowner's right to exclude state officials engaged in law enforcement activities on the reservation and, therefore, lacked civil jurisdiction over a tort claim against county officials arising from those activities. *County of Lewis v. Allen*, 163 F.3d 509 (9th Cir. 1998).

Cited *Odenwalt v. Zaring*, 102 Idaho 1, 624 P.2d 383 (1980); *State v. Ambro*, 142 Idaho 77, 123 P.3d 710 (Ct. App. 2005).

§ 67-5103. Matters excepted from state jurisdiction. — Nothing in this act shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping or fishing or the control, licensing, or regulation thereof.

History.

1963, ch. 58, § 3, p. 224.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the first sentence refers to S.L. 1963, Chapter 58, which is compiled as §§ 67-5101 to 67-5103.

CASE NOTES

Construction.

Controversy involving non-Indian.

Divorce action.

Construction.

Federal and state statutes passed for the benefit of Indians are to be construed in the Indians' favor. *State v. Major*, 111 Idaho 410, 725 P.2d 115 (1986).

Controversy Involving Non-Indian.

The fact that an Indian is involved in a controversy, particularly a controversy involving a non-Indian, does not automatically strip the state of all power to deal with the controversy under state law, and a state court has such power unless the subject matter is within exclusive federal authority. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982).

Divorce Action.

Where in a divorce action between a husband and his Indian wife, there was no evidence to show that their joint cattle operation or their household goods were either trust property or subject to restraints on alienation imposed by the federal government; therefore, a state court was not prevented from considering and dividing those properties, even though they were within the boundaries of an Indian reservation. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982), overruled on other grounds, *Coeur d'Alene Tribe v. Johnson*, 162 Idaho 754, 405 P.3d 13 (2017).

The exceptions to state jurisdiction in 25 U.S.C.S. § 1322(b) and this section do not prevent the courts of this state from requiring that one party to a marriage recompense the other party for his or her share of the community contributions that have gone into property that is held in trust or subject to a restraint on alienation by the federal government. *Sheppard v. Sheppard*, 104 Idaho 1, 655 P.2d 895 (1982).

25 U.S.C. § 1332(b) and this section do not prevent state courts from assuming jurisdiction in divorce actions involving Indians in order to reimburse the community for funds expended on the separate interest trust property located within the boundaries of a reservation. *Fisher v. Fisher*, 104 Idaho 68, 656 P.2d 129 (1982).

OPINIONS OF ATTORNEY GENERAL

Taxes.

The prohibition on taxation in this section is limited to those lands for which alienability is restricted, as such it does not affect the ability of the state to tax reservation lands held in fee in Indians. OAG 96-2.

RESEARCH REFERENCES

Idaho Law Review. — Land into Trust: An Inquiry into Law, Policy, and History, Frank Pommersheim. 49 Idaho L. Rev. 519 (2013).

Chapter 52

IDAHO ADMINISTRATIVE PROCEDURE ACT

Sec.

67-5201. Definitions.

67-5202. Office of the administrative rules coordinator.

67-5202A. Numbering and format of rules. [Repealed.]

67-5203. Publication of administrative bulletin.

67-5203A. [Amended and Redesignated.]

67-5204. Publication of administrative code.

67-5205. Format — Costs — Distribution — Funds.

67-5206. Promulgation of rules implementing administrative procedure act.

67-5207. Short title.

67-5208 — 67-5219. [Reserved.]

67-5220. Notice of intent to promulgate rules — Negotiated rulemaking.

67-5221. Public notice of proposed rulemaking.

67-5222. Public participation.

67-5223. Interim legislative review — Statement of economic impact.

67-5224. Pending rule — Final rule — Effective date.

67-5225. Rulemaking record.

67-5226. Temporary rules.

67-5227. Variance between pending rule and proposed rule.

67-5228. Exemption from regular rulemaking procedures.

67-5229. Incorporation by reference.

67-5230. Petition for adoption, amendment, repeal, or waiver of rules.

67-5231. Invalidity of rules not adopted in compliance with this chapter — Time limitation.

67-5232. Declaratory rulings by agencies.

67-5233 — 67-5239. [Reserved.]

67-5240. Contested cases.

67-5241. Informal disposition.

67-5242. Procedure at hearing.

67-5243. Orders not issued by agency head.

67-5244. Review of recommended orders.

67-5245. Review of preliminary orders.

67-5246. Final orders — Effectiveness of final orders.

67-5247. Emergency proceedings.

67-5248. Contents of orders.

67-5249. Agency record.

67-5250. Indexing of precedential agency orders — Indexing of agency guidance documents.

67-5251. Evidence — Official notice.

67-5252. Presiding officer — Disqualification.

67-5253. Ex parte communications.

67-5254. Agency action against licensees.

67-5255. Declaratory rulings by agencies.

67-5256 — 67-5269. [Reserved.]

67-5270. Right of review.

67-5271. Exhaustion of administrative remedies.

67-5272. Venue — Form of action.

67-5273. Time for filing petition for review.

67-5274. Stay.

67-5275. Agency record for judicial review.

67-5276. Additional evidence.

67-5277. Judicial review of issues of fact.

67-5278. Declaratory judgment on validity or applicability of rules.

67-5279. Scope of review — Type of relief.

67-5280 — 67-5290. [Reserved.]

67-5291. Legislative review of rules.

67-5292. Expiration of administrative rules.

§ 67-5201. Definitions. — As used in this act:

(1) “Administrative code” means the Idaho administrative code established in this chapter.

(2) “Agency” means each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in [section 1, article IV, of the constitution](#) of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction.

(3) “Agency action” means:

(a) The whole or part of a rule or order;

(b) The failure to issue a rule or order; or

(c) An agency’s performance of, or failure to perform, any duty placed on it by law.

(4) “Agency head” means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law.

(5) “Bulletin” means the Idaho administrative bulletin established in this chapter.

(6) “Contested case” means a proceeding which results in the issuance of an order.

(7) “Coordinator” means the administrative rules coordinator prescribed in [section 67-5202, Idaho Code](#).

(8) “Document” means any executive order, notice, rule or statement of policy of an agency.

(9) “Final rule” means a rule that has been adopted by an agency under the regular rulemaking process and is in effect.

(10) “License” means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes.

(11) “Official text” means the text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. Judicial notice shall be taken of all documents issued, prescribed, or promulgated in accordance with this chapter.

(12) “Order” means an agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons.

(13) “Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.

(14) “Pending rule” means a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review.

(15) “Person” means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(16) “Proposed rule” means a rule published in the bulletin as provided in [section 67-5221, Idaho Code](#).

(17) “Provision of law” means the whole or a part of the state or federal constitution, or of any state or federal:

(a) Statute; or

(b) Rule or decision of court.

(18) “Publish” means to bring before the public by publication in the bulletin or administrative code, by electronic means or as otherwise specifically provided by law.

(19) “Rule” means the whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of this chapter and that implements, interprets, or prescribes:

(a) Law or policy; or

(b) The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include:

(i) Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; or

(ii) Declaratory rulings issued pursuant to [section 67-5232, Idaho Code](#); or

(iii) Intra-agency memoranda; or

(iv) Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule.

(20) “Rulemaking” means the process for formulation, adoption, amendment or repeal of a rule.

(21) “Standard” means a manual, guideline, criterion, specification, requirement, measurement or other authoritative principle providing a model or pattern in comparison with which the correctness or appropriateness of specified actions, practices or procedures may be determined.

(22) “Submitted for review” means that a rule has been provided to the legislature for review at a regular or special legislative session as provided in [section 67-5291, Idaho Code](#).

(23) “Temporary rule” means a rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in [section 67-5226, Idaho Code](#).

History.

1965, ch. 273, § 1, p. 701; am. 1980, ch. 213, § 1, p. 485; am. 1981, ch. 192, § 1, p. 338; am. 1986, ch. 318, § 1, p. 783; am. 1992, ch. 263, § 1, p. 783; am. 1993, ch. 216, § 101, p. 587; am. 1996, ch. 161, § 1, p. 529; am. 2000, ch. 203, § 3, p. 510; am. 2010, ch. 20, § 1, p. 33.

STATUTORY NOTES

Cross References.

State board of correction, § 20-201 et seq.

State militia, § 46-101 et seq.

Amendments.

The 2010 amendment, by ch. 20, inserted “by electronic means” after “administrative code” in subsection (18).

Compiler’s Notes.

The term “this act”, referred to in the introductory paragraph, means S.L. 1965, Chapter 273, which is codified as §§ 67-5201, 67-5221, 67-5230, 67-5232, 67-5242, 67-5248, 67-5250, 67-5251, 67-5253, 67-5254, and 62-5278. Probably, “this act” should read “this chapter” meaning chapter 52 of title 67.

CASE NOTES

Agency.

Agency action.

Agency head.

Application.

— Dredge mining act.

— Preservation of historic sites act.

— Public Utilities Commission.

Constitutionality.

Contested case.

Determining a rule.

Fitness of lawyers.

Handbook adopted defectively.

Hearings by county board.

Parole hearings.

Prison administrative and disciplinary proceedings.

Procedures.

Purpose of act.

Review of administrative decisions.

Rules distinguished from laws.

Term of what is not a rule.

Statements concerning internal management.

Agency.

A prison inmate may not appeal a parole decision of the Idaho commission of pardons and parole under this section because the commission, when making parole decisions, acts as a part of the board of corrections, and is exempted from the definition of “agency” in this chapter. *Carman v. State, Comm’n of Pardons & Parole*, 119 Idaho 642, 809 P.2d 503 (1991).

The Idaho public utilities commission is a legislative agency not falling within the definition of a state “agency” as defined by this section. *Owner-Operator Indep. Drivers Ass’n v. Idaho Pub. Utils. Comm’n*, 125 Idaho 401, 871 P.2d 818 (1994), modified on other grounds, *Roe v. Harris*, 128 Idaho 569, 917 P.2d 403 (1996).

The board of trustees of a joint school district does not meet the definitional requirements for an agency. *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 918 P.2d 583 (1996).

Idaho petroleum clean water trust fund (fund) was not a state agency within meaning of this section and fund had no power to promulgate rules or decide contested cases. *V-1 Oil Co. v. Idaho Petro. Clean Water Trust Fund*, 128 Idaho 890, 920 P.2d 909, cert. denied, 519 U.S. 1009, 117 S. Ct. 514, 136 L. Ed. 2d 403 (1996).

A county board of commissioners does not fall within the definition of an “agency” for the purposes of applying this chapter. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

By the plain language of this section only state government entities are agencies, and a local government entity, such as a county board of commissioners, is not included as a agency. *Arthur v. Shoshone County*, 133 Idaho 854, 993 P.2d 617 (Ct. App. 2000).

Local sheriff's department fell outside the definition of an agency whose decisions were subject to this chapter; therefore, the trial court, even though it ruled against a fired department employee, erred in allowing an appeal from the departmental decision. *Gibson v. Ada County Sheriff's Dep't*, 139 Idaho 5, 72 P.3d 845 (2003).

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county board of commissioners did not violate the Idaho administrative procedure act, specifically § 67-5242, in not allowing the applicants to communicate with the board during its site visit; the county board of commissioners was not an "agency," as defined by this section; therefore, the requirements mandated by § 67-5242 were inapplicable. *Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010).

Agency Action.

There was no agency action under this section, where a licensee's liquor license expired by operation of law under § 23-908(1): the state liquor control agency had no duty to perform except to process renewal applications, and the licensee did not submit an application until months after the permitted grace period. *BV Bev. Co., LLC v. State*, 155 Idaho 624, 315 P.3d 812 (2013).

Idaho outfitters and guides licensing board's letter denying a guide's license renewal, after a termination, was an agency action for purposes of an appeal, where the board had acted according to its statutory duties. *Podsaid v. State Outfitters & Guides Licensing Bd.*, 159 Idaho 70, 356 P.3d 363 (2015).

Agency Head.

Because the administrator of the division of motor vehicles is not the "agency head" of the Idaho transportation department, a memorandum decision by him is not a final, appealable order. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

Application.

Supreme court of Idaho has no authority to decide, based upon public policy, that certain issues should not be resolved under this chapter. That is the legislature's responsibility. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003).

— Dredge Mining Act.

Although the dredge mining act chapter 13, title 7, Idaho Code, did not provide for a hearing upon the imposition or change of rules and regulations by the board of land commissioners, permittees were not denied procedural due process, since the adoption of rules and regulations would be covered by procedures set forth in this chapter. *State ex rel. Andrus v. Click*, 97 Idaho 791, 554 P.2d 969 (1976).

— Preservation of Historic Sites Act.

This chapter does not apply to judicial review of a city council decision concerning historic preservation districts, because the language of the chapter indicates that it is intended to govern the judicial review of decisions made by state administrative agencies, and not local governing bodies. *Idaho Historic Preservation Council, Inc. v. Boise City Council*, 134 Idaho 651, 8 P.3d 646 (2000).

— Public Utilities Commission.

When the public utilities commission is engaged in a legislative function, such as rate-setting for a cogenerator or small power producer, it need not act pursuant to this chapter, but need only fulfill the notice requirements imposed on it by the public utility regulation statutes. *A.W. Brown Co. v. Idaho Power Co.*, 121 Idaho 812, 828 P.2d 841 (1992).

Constitutionality.

This chapter was created in a constitutionally mandated manner. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Contested Case.

The department of employment was not required or entitled to appeal the findings and recommendations of the commission of human rights, since a hearing before the commission on a sex discrimination claim, held before

the commission was granted authority to issue orders, was not a “contested case.” *Hoppe v. Nichols*, 100 Idaho 133, 594 P.2d 643 (1979).

Decision of board of county commissioners denying hospital its right to any notices required to be given under the Idaho medical indigency statutes, § 31-3501 et seq., including notice of denial or notice of partial denial for county medical aid, was not reviewable, since it did not involve a contested case. *Idaho Falls Consol. Hosps. v. Board of County Comm’rs*, 104 Idaho 628, 661 P.2d 1227 (1983).

Because the power to impose certain specific conditions upon an application for an encroachment permit, including, but not limited to, provision of bonds and construction of traffic signals, is within the scope of the legislature’s grant of authority to the transportation department to regulate the safe use of and access to controlled access highways, and because the department’s denial or approval of the encroachment permit application determines the legal rights and interests of a property owner in accessing his property from a state highway and is, thus, an “order” under subsection (12), the department’s review of the application was a “contested case” and judicial review of the department’s action on the permit application is governed by § 67-5240. *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Determining a Rule.

In order to provide further guidance in determining when agency action requires rulemaking, the court considers the following characteristics of agency action indicative of a rule, as defined in subsection (19): (1) wide coverage, (2) applied generally and uniformly, (3) operates only in future cases, (4) prescribes a legal standard or directive not otherwise provided by the enabling statute, (5) expresses agency policy not previously expressed, and (6) is an interpretation of law or general policy. *Asarco Inc. v. State*, 138 Idaho 719, 69 P.3d 139 (2003).

Fitness of Lawyers.

The procedure to be used in character and fitness determinations of lawyers is not governed by this chapter, as the chapter does not apply to the state bar board of commissioners, because they are a part of the judicial,

rather than the executive, branch. *Dexter v. Idaho State Bd. of Comm'rs*, 116 Idaho 790, 780 P.2d 112 (1989).

Handbook Adopted Defectively.

Where an administrative agency's policy and procedures manual was not adopted pursuant to the procedural requirements of this chapter, the agency's handbook had to be construed as merely an internal guideline capable of being changed by an agency head when necessary, not having the force and effect of law; and since the manual did not have the force and effect of law, no cause of action could be based on its alleged violation. *Service Employees Int'l Local 6 v. Idaho Dep't of Health & Welfare*, 106 Idaho 756, 683 P.2d 404 (1984).

Hearings by County Board.

Since the board of county commissioners is treated as an administrative agency for purposes of judicial review, it should be treated in the same manner for hearings under this section. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

Parole Hearings.

Section 20-223, in giving the commission of pardons and parole the power to promulgate rules and regulations in compliance with this chapter, did not mandate that the procedural rights established in this chapter be utilized in parole hearings; moreover, the definitional statement in subsection (1) of this section specifically excludes the board of corrections from the requirements of this chapter. *Balla v. Idaho State Bd. of Cors.*, 595 F. Supp. 1558 (D. Idaho 1984); *Balla v. Idaho State Bd. of Cors.*, 869 F.2d 461 (9th Cir. 1988).

Prison Administrative and Disciplinary Proceedings.

Prison administrative and disciplinary proceedings are subject neither to the rules of evidence nor the provisions of this chapter; therefore, the process due in a prison classification hearing does not preclude hearsay evidence which the state correctional institution classification committee reasonably deems to be reliable. *Wolfe v. State*, 114 Idaho 659, 759 P.2d 950 (Ct. App. 1988).

Procedures.

Proceedings before the personnel commission, and appeals therefrom to the district court, must be considered exclusively under chapter 53, title 67, Idaho Code, and not under this chapter. *Swisher v. State Dep't of Env'tl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977).

Administrative remedies had not been exhausted where the state transportation department had not issued a final order regarding whether a bidder and its surety were entitled to the return of their bid bond after the bidder had discovered a mistake in its bid where the two documents in the record that could arguably have constituted a final order were the August 14, 2000, letter written by the department's counsel and the September 14, 2000, letter entitled "Final Report" written by a roadway design engineer. The supreme court of Idaho held that, because neither of those persons was the "agency head," they could only issue either a recommended order or a preliminary order; neither letter was a recommended order that became final upon review by the agency head. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003).

Purpose of Act.

One of the compelling reasons for this chapter is to require administrative agencies to make available information concerning their internal functionings. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

Review of Administrative Decisions.

This chapter governs the standard of judicial review of an administrative decision. *Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc.*, 117 Idaho 126, 785 P.2d 690 (Ct. App. 1990).

Since city council's approval of preliminary plat application was not final approval for the development of the subdivision, which would require approval of the final application and flood plain permit application, it was not a final decision that was subject to judicial review. *Bothwell v. City of Eagle*, 130 Idaho 174, 938 P.2d 1212 (1997).

Site selection by the county commissioners is a significant step in the process of selecting a building and operating a landfill, and falls within the "approval authorized" contemplated by § 39-7420(4), and, therefore, landowners are permitted to seek judicial review of the site selection under

this chapter. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

For purposes of a determination of whether to grant absolute immunity, the procedures contained in the Idaho Medical Practice Act, § 54-1801 et seq. and this chapter provide the necessary safeguards reducing the need for private damages actions for parties who appear before the Idaho state board of medicine and the Idaho state board of medicine board of professional discipline. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916 (9th Cir. 2004).

Trial court's exercise of its jurisdiction and determination that it could review the state insurance fund's (SIF) surplus and dividend practices was supported by this chapter and the specific facts of the case. *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 388, 111 P.3d 73 (2005), overruled on other grounds, *Farber v. Idaho State Ins. Fund*, 152 Idaho 495, 272 P.3d 467 (2012) and *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

Rules Distinguished from Laws.

While rules and regulations enacted by administrative agencies may be given the force and effect of law, they do not rise to the level of statutory law; only the legislature can make law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

The origin of rule making administrative capacity stems from a delegation from the legislature, not a constitutional grant of power to the executive, and such rules or regulations promulgated thereunder are less than the equivalent of statutory law. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Determinations of when a purported rule actually amounts to a re-defining of the original statutory directive will have to be determined on a case-by-case basis. *Tomorrow's Hope, Inc. v. Idaho Dep't of Health & Welfare*, 124 Idaho 843, 864 P.2d 1130 (1993).

Term of What Is Not a Rule.

Where health & welfare's internal memorandum, construing direct care as meaning "hands-on" services only, did not affect a substantive change in direction from the agency's existing direct care policy nor was it fundamentally inconsistent with the agency's earlier accounting practices, the "hands-on" policy was a clarification of the regulatory term "direct care

costs” rather than an attempt to re-define the statutory term “peculiar”; as such, the policy fell directly with the definition of what is not a rule under the terms of the 1986 amendment of this section and, accordingly, is not subject to the promulgation requirements of § 67-5203. *Tomorrow’s Hope, Inc. v. Idaho Dep’t of Health & Welfare*, 124 Idaho 843, 864 P.2d 1130 (1993).

Statements Concerning Internal Management.

The definition of “rule” provides that “statements concerning only the internal management of any agency and not affecting private rights or procedures available to the public . . .” are not rules; not being rules, they do not have the force and effect of law, and a violation of them does not create a private cause of action. *Service Employees Int’l Local 6 v. Idaho Dep’t of Health & Welfare*, 106 Idaho 756, 683 P.2d 404 (1984).

Cited *Gary v. Nichols*, 447 F. Supp. 320 (D. Idaho 1978); *Higginson v. Westergard*, 100 Idaho 687, 604 P.2d 51 (1979); *Allen v. Lewis-Clark State College*, 105 Idaho 447, 670 P.2d 854 (1983); *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984); *IHC Hosps. v. Board of Comm’rs*, 108 Idaho 136, 697 P.2d 1150 (1985); *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985); *Hayden Pines Water Co. v. Idaho Pub. Utils. Comm’n*, 111 Idaho 331, 723 P.2d 875 (1986); *Collins Bros. Corp. v. Dunn*, 114 Idaho 600, 759 P.2d 891 (1988); *Lowery v. Board of County Comm’rs*, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988); *South Fork Coalition v. Board of Comm’rs*, 117 Idaho 857, 792 P.2d 882 (1990); *Waggoner v. State*, 121 Idaho 758, 828 P.2d 321 (Ct. App. 1991); *City of Lava Hot Springs v. Campbell*, 125 Idaho 768, 874 P.2d 579 (Ct. App. 1994); *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996); *Idaho Dep’t of Corr. v. Anderson*, 134 Idaho 680, 8 P.3d 675 (Ct. App. 2000); *Zattiero v. Homedale Sch. Dist. No. 370*, 137 Idaho 568, 51 P.3d 382 (2002); *Sagewillow, Inc. v. Idaho Dep’t of Water Res.*, 138 Idaho 831, 70 P.3d 669 (2003); *Horne v. Idaho State Univ.*, 138 Idaho 700, 69 P.3d 120 (2003); *Mallonee v. State*, 139 Idaho 615, 84 P.3d 551 (2004); *Am. Lung Ass’n v. State*, 142 Idaho 544, 130 P.3d 1082 (2006); *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm’n*, 142 Idaho 659, 132 P.3d 416 (2006); *Archer v. Dep’t of Transp. (In re Archer)*, 145 Idaho 617, 181 P.3d 543 (Ct. App. 2008); *Wheeler v. Idaho Transp. Dep’t*, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); *McDaniel v. State (In re Driver’s*

License Suspension of McDaniel), 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010); *Wilkinson v. State*, 151 Idaho 784, 264 P.3d 680 (Ct. App. 2011); *State v. Haynes*, 159 Idaho 36, 355 P.3d 1266 (2015); *St. Alphonsus Reg'l Med. Ctr. v. Gooding County*, 159 Idaho 84, 356 P.3d 377 (2015); *Krinit v. Idaho Dep't of Fish & Game*, 159 Idaho 125, 357 P.3d 850 (2015); *Knox v. State (In re Agency's Finding of Fact)*, 162 Idaho 729, 404 P.3d 1280 (Ct. App. 2017).

OPINIONS OF ATTORNEY GENERAL

Contested Cases.

This chapter applies to contested cases; 18 month permanency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. 675(5), do not fall within the scope of “contested cases” as defined in the chapter. OAG 88-9.

Federal Law Conflict.

A conflict between federal and state law cannot be resolved by a rule or regulation, because a rule or regulation does not have the force and effect of law to amend or modify a provision of the Idaho Code. OAG 89-3.

RESEARCH REFERENCES

Idaho Law Review. — *Idaho Administrative Law: A Primer for Students and Practitioners*, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-5202. Office of the administrative rules coordinator. — (1) There is hereby established the office of the administrative rules coordinator in the division of financial management. The coordinator shall be a nonclassified employee and shall be appointed by and serve at the pleasure of the administrator of the division of financial management. All other employees of the office of the administrative rules coordinator shall be nonclassified positions, and any persons employed to fill positions in the office of the administrative rules coordinator thereafter shall be exempt from the provisions of chapter 53, title 67, Idaho Code.

(2) The coordinator shall have the authority to make clerical revisions or to correct manifest typographical or grammatical errors to both proposed and existing rules that do not alter the sense, meaning or effect of such rules.

(3) The coordinator shall receive all notices and rules required in this chapter to be published in the bulletin or the administrative code. The coordinator shall prescribe a uniform style, form, and numbering system which shall apply to all rules adopted by all agencies. The coordinator shall review all submitted rules for style, form, and numbering and may return a rule that is not in proper style, form, or number.

History.

I.C., § 67-5202, as added by 1992, ch. 263, § 2, p. 783; am. 1994, ch. 180, § 218, p. 420; am. 1996, ch. 119, § 1, p. 433; am. 2008, ch. 183, § 1, p. 555; am. 2019, ch. 74, § 1, p. 173.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Amendments.

The 2008 amendment, by ch. 183, added the subsection (1) and (3) designations to the existing provisions and added subsection (2).

The 2019 amendment, by ch. 74, rewrote subsection (1), which formerly read: “There is hereby established the office of administrative rules coordinator in the department of administration. The coordinator shall be a nonclassified employee and shall be appointed by and serve at the pleasure of the director of the department of administration. All other employees of the office of administrative rules employed on July 1, 1996, shall be classified employees, but upon their termination their positions and any positions vacant upon July 1, 1996, shall be nonclassified positions and any persons employed to fill positions in the office of administrative rules thereafter shall be exempt from the provisions of chapter 53, title 67, Idaho Code.”

Compiler’s Notes.

Former § 67-5202 was amended and redesignated as § 67-5250 by § 35 of S.L. 1992, ch. 263, effective July 1, 1993.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 218 was effective January 2, 1995..

Section 3 of S.L. 2008, ch. 183 declared an emergency. Approved March 8, 2008.

§ 67-5202A. Numbering and format of rules. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1965, ch. 273, § 2, p. 701; am. 1980, ch. 204, § 1, p. 468, was repealed by S.L. 1992, ch. 263, § 5, effective July 1, 1993.

§ 67-5203. Publication of administrative bulletin. — (1) All documents required or authorized in this chapter or by other provision of law to be published shall initially be published electronically in the bulletin. The bulletin shall be published electronically by the administrative rules coordinator not less frequently than the first Wednesday of each calendar month, but not more frequently than every other week.

(2) The bulletin shall contain all previously unpublished documents filed with the coordinator in compliance with a publication schedule established by the coordinator.

(3) Each issue of the bulletin shall contain a table of contents. A cumulative index shall be published at least every three (3) months.

(4) The following documents, if not required to be otherwise published, shall be published in the bulletin:

- (a) All executive orders of the governor;
- (b) Agency notices of intent to promulgate rules, notices of proposed rules, and the text of all proposed and pending rules, together with any explanatory material supplied by the agency;
- (c) All agency documents required by law to be published in the bulletin; and
- (d) Any legislative documents affecting a final agency rule.

(5) The text of all documents published electronically in the bulletin shall be the official text of that document until the document has been published in the administrative code. Judicial notice shall be taken of all documents published electronically in the bulletin.

History.

I.C., § 67-5203, as added by 1992, ch. 263, § 3, p. 783; am. 1993, ch. 216, § 102, p. 853; am. 1993, ch. 245, § 1, p. 587; am. 1994, ch. 371, § 1, p. 1194; am. 1996, ch. 161, § 2, p. 529; am. 2010, ch. 21, § 1, p. 37.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 21, inserted “electronically” after “published” throughout the section; and deleted former subsection (6) which read: “The coordinator shall provide a process for access to the contents of the bulletin and to the administrative code by electronic means.”

Compiler’s Notes.

Former § 67-5203 was amended and redesignated as § 67-5221 by § 10 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

Cited *Krinit v. Idaho Dep’t of Fish & Game*, 159 Idaho 125, 357 P.3d 850 (2015).

§ 67-5203A. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-5203A was amended and redesignated as § 67-5229 by § 19 of S.L. 1992, ch. 263, effective July 1, 1993.

§ 67-5204. Publication of administrative code. — (1) The administrative rules coordinator shall every year publish electronically a publication to be known as the “Idaho Administrative Code.”

(2) The administrative code shall be a codification of: (a) All executive orders of the governor that have been published in the bulletin and have not been rescinded; (b) The text of all final rules; (c) Any legislative documents affecting a final agency rule; and (d) All documents required by law to be published in the administrative code.

(3) The text of all documents published electronically in the administrative code shall be the official text of that document. Judicial notice shall be taken of all documents published electronically in the administrative code.

History.

I.C., § 67-5204, as added by 1992, ch. 263, § 4, p. 783; am. 1993, ch. 216, § 103, p. 587; am. 1996, ch. 161, § 3, p. 529; am. 2010, ch. 20, § 2, p. 33.

STATUTORY NOTES

Prior Laws.

Former § 67-5204, which comprised 1965, ch. 273, § 4, p. 701; am. 1978, ch. 255, § 2, p. 556, was repealed by S.L. 1992, ch. 263, § 11, effective July 1, 1993.

Amendments.

The 2010 amendment, by ch. 20, in subsection (1), substituted “every year” for “annually” and inserted “electronically” after “publish”; and in subsection (3), inserted “electronically” after “published” in two places.

CASE NOTES

Decisions Under Prior Law Filing.

To satisfy the requirement that an agency ruling must be made available for public inspection in order to be given full force and effect, an agency must file in its central office a certified copy of each rule adopted by it and must “publish” all effective rules. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

§ 67-5205. Format — Costs — Distribution — Funds. — (1) The administrative code and the permanent supplements thereto shall be published in such a manner that every agency has an opportunity to procure, at reasonable cost from the coordinator, individual electronic copies of the rules and statements of policy of such agency published by authority of this chapter. No administrative rule or statement of policy published in the administrative code or the permanent supplements shall be reset or otherwise reprinted at public expense upon a format distinct from that of the administrative code without a certification by the coordinator that such special format is necessary for the effective performance by the agency of its functions.

(2) The prices to be charged for individual electronic copies of and subscriptions to the administrative code, the permanent supplements thereto and the bulletin, and for rules and statements of policy, which prices may be fixed without reference to the restrictions placed upon and fixed for the sale of other publications of the state shall be set by rules promulgated by the coordinator. The coordinator may set prices without reference to the restrictions placed upon the sale of other publications of the state.

(3) The coordinator shall provide to the legislature free electronic copies of all rules subject to review by the legislature pursuant to [section 67-5291, Idaho Code](#), and may distribute other free electronic copies for official use.

(4) Without limiting the generality of the provisions of subsection (2) of this section, the rules of the coordinator may provide for volume discounts to be available to established law book publishers who agree to incorporate fully administrative rules, the permanent supplements thereto and the bulletin into their general scheme of promotion and distribution, and may provide for the free reciprocal exchange of publications between this state and other states and foreign jurisdictions. The provisions of this section include the authority to exchange, display, access and publish texts through electronic media.

(5) There is hereby created in the state treasury the administrative code fund. All moneys received from the production of rules, the sale of the administrative code, the permanent supplements thereto, or the bulletin, and

for providing electronic access, shall be deposited in the fund. All agencies that have any material published electronically in the bulletin, administrative code or supplements thereto, or newspapers, are hereby authorized and directed to pay out of their appropriations to the coordinator their respective shares of the costs of such publication and distribution of such material. All moneys placed in the fund may be appropriated to the coordinator for the administration of the provisions of this chapter and for the publication and distribution of the bulletin, administrative code or supplements thereto, as authorized in this chapter.

(6)(a) The coordinator shall charge each participating agency as follows:

(i) An annual fee for each page published electronically in the administrative code, not to exceed fifty-six dollars (\$56.00) per page.

(ii) A fee for each page published electronically in the bulletin, not to exceed sixty-one dollars (\$61.00) per page. A fee per page may be charged even though less than a full page of publication is required, however, there shall be no fee associated with any portion of a publication necessitated by or pertaining to the removal of a rule or a reduction of the regulatory obligation imposed by a rule.

(b) Each participating agency shall promptly pay into the administrative code fund such charge.

History.

I.C., § 67-5205, as added by 1992, ch. 263, § 6, p. 783; am. 1993, ch. 245, § 2, p. 853; am. 1994, ch. 371, § 2, p. 1194; am. 1996, ch. 159, § 23, p. 502; am. 1996, ch. 161, § 4, p. 529; am. 1996, ch. 162, § 1, p. 540; am. 2006, ch. 235, § 32, p. 701; am. 2008, ch. 13, § 2, p. 18; am. 2010, ch. 20, § 3, p. 33; am. 2016, ch. 185, § 1, p. 497; am. 2019, ch. 329, § 1, p. 980.

STATUTORY NOTES

Prior Laws.

Former § 67-5205, which comprised 1965, ch. 273, § 5, p. 701; am. 1980, ch. 78, § 1, p. 160; am. 1981, ch. 251, § 1, p. 541; am. 1983, ch. 86, § 1, p. 181; am. 1985, ch. 221, § 1, p. 533; am. 1986, ch. 105, § 1, p. 292, was repealed by S.L. 1992, ch. 263, § 20, effective July 1, 1993.

Amendments.

This section was amended by three 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 159, § 23, in subdivision (2)(d), substituted “legislative services office” for “legislative council.”

The 1996 amendment, by ch. 161, § 4, in the last sentence of subsection (2), inserted “shall provide to the legislature free copies of all rules, subject to review by the legislature pursuant to [section 67-5291, Idaho Code](#), and” and inserted “other” preceding “free copies.”

The 1996 amendment, by ch. 162, § 1, in subsection (4) in the first paragraph in the first sentence, substituted “administrative code fund” for “administrative code account,” at the end of the sentence substituted “fund” for “account”, in the fourth sentence substituted “fund may be appropriated” for “account are perpetually appropriated,” and substituted the final paragraph of subsection (4) for two paragraphs which read, “The coordinator shall allocate costs of production, publication and distribution to each participating agency in the same proportion that the amount of the costs of production, publication and distribution for that agency bears to the total costs of production, publication and basis. A cost per page may be imposed even though less than a full page of publication is required.”

The 2006 amendment, by ch. 235, in subsection (2)(g), substituted “commission for libraries” for “state library”; and, in subsection (2)(h), substituted “Brigham Young University-Idaho” for “Ricks College.”

The 2008 amendment, by ch. 13, substituted “The College of Idaho Library” for “Albertson College Library” in subsection (2)(h).

The 2010 amendment, by ch. 20, in the first sentence of subsection (1), substituted “electronic” for “printed pamphlet”; in the first sentence of subsection (2), inserted “electronic” after “individual”, deleted “for reprints and bound volumes thereof” after “and the bulletin”, deleted “pamphlet” before “rules and statements” and inserted “electronic” after “and the number of”; in the last sentence of subsection (2), inserted “electronic” after “Free”; in the last paragraph following subsection (2), inserted “electronic” after “free” in three places; in subsection (4), inserted “electronically” after

“publish” in three places; and in the third sentence of subsection (4), inserted “such” after “the costs of”.

The 2016 amendment, by ch. 185, rewrote subsection (2), deleting information related to distribution of free electronic copies of the administrative code and bulletin and designating part of the last sentence as present subsection (3); and redesignated the subsequent subsections accordingly.

The 2019 amendment, by ch. 329, designated the last four sentences in subsection (5), which formerly read: “The coordinator shall charge an annual fee to each participating agency for each page published electronically in the administrative code not to exceed fifty-six dollars (\$56.00) per page. In addition, the coordinator shall charge a fee to each participating agency for each page published electronically in the bulletin not to exceed sixty-one dollars (\$61.00) per page. A fee per page may be charged even though less than a full page of publication is required, and each participating agency shall promptly pay into the administrative code fund such charge,” as present subsection (6).

Effective Dates.

Section 3 of S.L. 2008, ch. 13 declared an emergency. Approved February 13, 2008.

CASE NOTES

[Administrative review.](#)

[Publication.](#)

[Administrative Review.](#)

The public policy behind this statute should encourage administrative agencies to attach, to all preliminary orders, instructions concerning the available administrative review of those orders. [Williams v. State, 95 Idaho 5, 501 P.2d 203 \(1972\).](#)

[Publication.](#)

In satisfying its duty to publish its rules, an administrative agency must at least furnish state, district and county law libraries with complete sets of

pertinent agency rules and regulations; if it fails to do so, its rules and regulations are without force and effect. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

The rules and regulations of an agency must be properly published and made available for public inspection before the doctrine of exhaustion of administrative remedies becomes applicable; therefore trial court could not rule as a matter of law on motion to dismiss that appellants had not complied with agency regulations and exhausted its administrative remedy in view of factual issue regarding whether or not the agency's regulations had been published. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

To satisfy the requirement that an agency ruling must be made available for public inspection in order to be given full force and effect, an agency must file in its central office a certified copy of each rule adopted by it and must "publish" all effective rules adopted by it. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

§ 67-5206. Promulgation of rules implementing administrative procedure act. — (1) In accordance with the rulemaking requirements of this chapter, the administrative rules coordinator shall promulgate rules implementing the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code. The rules shall:

- (a) establish a uniform numbering system applicable to rules adopted by all agencies;
- (b) establish a uniform style and format applicable to rules adopted by all agencies;
- (c) establish a publication schedule for the bulletin and the administrative code, including deadlines for the submission of documents to be included within each publication;
- (d) establish a uniform indexing system for agency orders; and
- (e) include such other rules as the coordinator deems necessary to implement the provisions of sections 67-5203, 67-5204 and 67-5205, Idaho Code, and this section.

(2) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules of procedure appropriate for use by as many agencies as possible. The rules shall deal with all general functions and duties performed in common by several agencies.

(3) In accordance with the rulemaking requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of sections 67-5220 through 67-5232, Idaho Code. The rules shall specify:

- (a) the form and content for petitions requesting an opportunity for an oral presentation in a substantive rulemaking;
- (b) procedures for the creation of a record of comments received at any oral presentation;
- (c) the standards by which exemptions from regular rulemaking requirements will be authorized to correct typographical errors, transcription errors, or clerical errors;

- (d) the form and content for a petition for the adoption of rules and the procedure for its submission, consideration and disposition;
- (e) procedures to facilitate negotiated rulemaking;
- (f) the form and content of a petition for a declaratory ruling on the applicability of statutes or regulations; and
- (g) such other provisions as may be necessary or useful.

(4) In accordance with the rule making [rulemaking] requirements of this chapter, the attorney general shall promulgate rules implementing the provisions of [sections 67-5240 through 67-5255, Idaho Code](#). The rules shall specify:

- (a) form and content to be employed in giving notice of a contested case;
- (b) procedures and standards required for intervention in a contested case;
- (c) procedures for prehearing conferences;
- (d) format for pleadings, briefs, and motions;
- (e) the method by which service shall be made;
- (f) procedures for the issuance of subpoenas, discovery orders, and protective orders if authorized by other provisions of law;
- (g) qualifications for persons seeking to act as a hearing officer;
- (h) qualifications for persons seeking to act as a representative for parties to contested cases;
- (i) procedures to facilitate informal settlement of matters;
- (j) procedures for placing ex parte contacts on the record; and
- (k) such other provisions as may be necessary or useful.

(5)(a) After July 1, 1993, the rules promulgated by the attorney general under this section shall apply to all agencies that do not affirmatively promulgate alternative procedures after the promulgation of the rules by the attorney general. The rules promulgated by the attorney general shall supersede the procedural rules of any agency in effect on June 30, 1993,

unless that agency promulgates its own procedures as provided in paragraph (b) of this subsection.

(b) After July 1, 1993, an agency that promulgates its own procedures shall include in the rule adopting its own procedures a finding that states the reasons why the relevant portion of the attorney general's rules were inapplicable to the agency under the circumstances.

History.

I.C., § 67-5206, as added by 1992, ch. 263, § 7, p. 783; am. 1993, ch. 216, § 104, p. 587.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

Former § 67-5206 was amended and redesignated as § 67-5230 by § 21 of S.L. 1992, ch. 263, effective July 1, 1993.

The bracketed insertion in the introductory paragraph in subsection (4) was added by the compiler to grammatically correct the sentence.

CASE NOTES

Cited **Mallonee v. State**, 139 Idaho 615, 84 P.3d 551 (2004).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-5207. Short title. — This chapter may be cited as the “Idaho Administrative Procedure Act.”

History.

I.C., § 67-5207, as added by 1992, ch. 263, § 8, p. 783.

STATUTORY NOTES

Compiler’s Notes.

Former § 67-5207 was amended and redesignated as § 67-5278 by § 50 of S.L. 1992, ch. 263, effective July 1, 1993.

§ 67-5208 — 67-5219. [Reserved.]

STATUTORY NOTES

Compiler's Notes.

Former §§ 67-5208 to 67-5210 were amended and redesignated as §§ 67-5232, 67-5242 and 67-5251, respectively by S.L. 1992, ch. 263, §§ 23, 26, and 36, respectively, effective July 1, 1993.

Former § 67-5211 which comprised 1965, ch. 273, § 11, p. 701, was repealed by S.L. 1992, ch. 263, § 29, effective July 1, 1993.

Former §§ 67-5212 to 67-5214 were amended and redesignated as §§ 67-5248, 67-5253 and 67-5254, respectively by S.L. 1992, ch. 263, §§ 33, 38, and 39 respectively, effective July 1, 1993.

Former § 67-5215 which comprised 1965, ch. 273, § 15, p. 701; am. 1991, ch. 248, § 1, p. 616, was repealed by S.L. 1992, ch. 263, § 41, effective July 1, 1993.

Former § 62-5216, which comprised 1965, ch. 273, § 16, p. 616, was repealed by S.L. 1992, ch. 263, § 41, effective July 1, 1993.

Former § 67-5217, which comprised 1969, ch. 48, § 1, p. 125; am. 1976, ch. 185, § 1, p. 671; am. 1980, ch. 212, § 3, p. 481, was repealed by S.L. 1992, ch. 263, § 52, effective July 1, 1993.

Former § 67-5218 was amended and redesignated as 67-5291 by S.L. 1992, ch. 263, § 53, effective July 1, 1993.

Former § 67-5219 was redesignated as § 67-5292 by S.L. 1992, ch. 263, § 54, effective July 1, 1993.

§ 67-5220. Notice of intent to promulgate rules — Negotiated rulemaking. — (1) Prior to the adoption, amendment or repeal of a rule, an agency shall determine whether negotiated rulemaking is feasible. The agency's determination of whether negotiated rulemaking is feasible is not subject to judicial review. If the agency determines that negotiated rulemaking is feasible, it shall publish in the bulletin a notice of intent to promulgate a rule. The notice shall contain a brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking, and shall include the purpose of the rule, the statutory authority for the rulemaking, citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking, and the principal issues involved. The notice shall also state that interested persons have the opportunity to participate with the agency in negotiated rulemaking as provided in this section and shall identify an individual to whom comments on the proposal may be sent. If the agency determines that negotiated rulemaking is not feasible, it shall explain why negotiated rulemaking is not feasible in a notice of proposed rulemaking published pursuant to section 67-5221, Idaho Code, and shall proceed with rulemaking as provided pursuant to this chapter. Each agency that has a website shall cause the notice of intent to promulgate rules to be placed onto or accessible from the home page of the agency's website.

(2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested persons and the agency seek consensus on the content of a rule. Agencies shall proceed through such informal rulemaking whenever it is feasible to do so in order to improve the substance of proposed rules by drawing upon shared information, knowledge, expertise and technical abilities possessed by interested persons and to expedite formal rulemaking.

(3) To facilitate the achievement of the purposes of this section, agencies shall, at a minimum:

- (a) Provide a reasonable period of time for interested persons to respond to the notice of intent to promulgate rules;

- (b) Provide notice of meetings to interested persons who responded to the notice of intent to promulgate rules;
- (c) Upon request, make available to persons attending the meetings all information that is considered by the agency in connection with the formulation of the proposed rule and that is not exempt from disclosure pursuant to chapter 1, title 74, Idaho Code;
- (d) Consider the recommendations of interested persons concerning the subject of the proposed rule;
- (e) Establish, maintain and timely update the negotiated rulemaking schedule and a list of written comments and other documents and information pertinent to the proposed rule and make that information available to persons attending the negotiated rulemaking meeting;
- (f) Prepare a written summary of unresolved issues, key information considered and conclusions reached during and as a result of the negotiated rulemaking and make that summary available to persons who attended the negotiated rulemaking meetings.

History.

I.C., § 67-5220, as added by 1992, ch. 263, § 9, p. 783; am. 1994, ch. 271, § 1, p. 834; am. 2012, ch. 310, § 1, p. 856; am. 2015, ch. 141, § 175, p. 379.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 310, added “Negotiated rulemaking” to the section heading; in subsection (1), added the first two sentences, substituted “If the agency determines that negotiated rulemaking is feasible, it shall” for “An agency may” at the beginning of the third sentence, inserted “also state that interested persons have the opportunity to participate with the agency in negotiated rulemaking as provided in this section and shall” in the fifth sentence and added the last two sentences; in subsection (2), substituted “parties” for “persons” in the first sentence, substituted “agencies shall” for “agencies are encourage” and added “in order to improve the substance of proposed rules by drawing upon shared

information, knowledge, expertise and technical abilities possessed by interested persons and to expedite formal rulemaking”; and added subsection (3).

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in paragraph (3)(c).

Effective Dates.

Section 2 of S.L. 2012, ch. 310 declared an emergency. Approved April 5, 2012.

§ 67-5221. Public notice of proposed rulemaking. — (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall publish notice of proposed rulemaking in the bulletin. The notice of proposed rulemaking shall include:

- (a) The specific statutory authority for the rulemaking, including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking;
- (b) A statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;
- (c) Except as otherwise required in paragraph (d) of this subsection, a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding [section 67-5231, Idaho Code](#), the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule;
- (d) If a notice of proposed rulemaking of the Idaho state tax commission, a specific description of any negative or positive fiscal impact greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, notwithstanding [section 67-5231, Idaho Code](#), the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule;
- (e) The text of the proposed rule prepared in legislative format;
- (f) The location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- (g) The manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

(h) The manner in which persons may request an opportunity for an oral presentation as provided in [section 67-5222, Idaho Code](#);

(i) The deadline for public comments on the proposed rule; and

(j) If negotiated rulemaking was not conducted, an explanation of the agency's determination that negotiated rulemaking was not feasible.

(2)(a) Coinciding with each issue of the bulletin, the coordinator shall cause the publication of an abbreviated notice with a brief description of the subject matter, showing any agency's intent to propose a new or changed rule that is a new addition to that issue of the bulletin. The notice shall be in the form of an official legal notice, as provided for in [section 60-105, Idaho Code](#), and subject to the rates set forth therein.

The notice shall include the agency name and address, rule number, rule subject matter as provided in subsection (1)(b) of this section, and the comment deadline. The notice shall also include a brief statement that informs citizens where they can view the administrative bulletin in electronic form.

(b) The coordinator shall cause the notice required in subsection (2)(a) of this section to be published in at least the accepting newspaper of largest paid circulation that is published in each county in Idaho or, if no newspaper is published in the county, then in an accepting newspaper of largest paid circulation published in Idaho and circulated in the county. The newspaper of largest circulation shall be established by the sworn statement of average annual paid weekday issue circulation that has been filed by a newspaper with the United States post office for the calendar year immediately preceding the calendar year during which the advertisement in this section is required to be published.

(3) Each agency that has a website shall cause the notice required by either subsection (1) or (2) of this section to be placed onto or be accessible from the home page of the agency's website so that interested persons can view it online.

History.

1965, ch. 273, § 3, p. 701; am. 1978, ch. 255, § 1, p. 556; am. 1980, ch. 44, § 1, p. 72; am. 1980, ch. 212, § 1, p. 481; am. 1981, ch. 192, § 2, p. 338; am. 1981, ch. 245, § 1, p. 489; am. 1983 (Ex. Sess.), ch. 4, § 1, p. 23; am.

and redesign. 1992, ch. 263, § 10, p. 783; am. 1993, ch. 216, § 105, p. 587; am. 1993, ch. 245, § 3, p. 853; am. 1994, ch. 271, § 2, p. 834; am. 1994, ch. 371, § 3, p. 1194; am. 1996, ch. 161, § 5, p. 529; am. 2005, ch. 129, § 1, p. 416; am. 2010, ch. 45, § 1, p. 82; am. 2012, ch. 310, § 2, p. 856; am. 2013, ch. 284, § 1, p. 732.

STATUTORY NOTES

Cross References.

State general fund, § 67-1205.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63](#)-101.

Prior Laws.

This section was formerly compiled as § 67-5203 and was amended and redesignated as § 67-5221 by § 10 of S.L. 1992, ch. 263, effective July 1, 1993.

Amendments.

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 271, § 2, added “including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking” at the end of paragraph (1)(a); and in the PUBLIC NOTICE in paragraph (2)(a), substituted “and” for “[an]d” following “complete text”, which word was deleted by ch. 371.

The 1994 amendment, by ch. 371, § 3, in paragraph (2)(a), deleted “but less than twelve (12) points,” following “greater than seven (7) points,” and substituted “A prominent bold typeface heading designed to alert readers to the rules and information contained in the notice. The notice shall include the agency name and address, rule number, rule subject matter as provided in paragraph (1)(b) of this section, and the comment deadline. A brief statement in a prominent bold typeface that informs citizens where they can view the administrative bulletin in hard copy or electronic form shall be included.” for a form titled “PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES”; and added the last sentence of paragraph (2)(b).

The 2010 amendment, by ch. 45, in paragraph (2)(a), in the first paragraph, rewrote the second sentence, which formerly read: “The form of the notice shall be substantially as follows: typefaces used shall measure greater than seven (7) points, and space width shall not be less than two (2) newspaper columns”, and deleted “The content of the notice shall be substantially as follows” from the end; in the second paragraph deleted the former first sentence, which read: “A prominent bold typeface heading designed to alert readers to the rules and information contained in the notice”, and rewrote the last sentence, which formerly read: “A brief statement in a prominent bold typeface that informs citizens where they can view the administrative bulletin in hard copy or electronic form shall be included”; and, in paragraph (2)(b), deleted the former last two sentences, which read: “The coordinator is authorized to negotiate a rate or rates with any or all newspapers publishing these notices which will provide adequate exposure to the notices by the least expensive means. For the purposes of this section, the provisions of [section 60-105, Idaho Code](#), shall not apply.”

The 2012 amendment, by ch. 310, added paragraph (1)(i) and subsection (3).

The 2013 amendment, by ch. 284, in paragraph (1)(c), added the exception at the beginning and substituted “paragraph” for “subsection” near the end; and added paragraph (1)(d) and redesignated the subsequent paragraphs accordingly.

Compiler’s Notes.

Section 3 of S.L. 2013, ch. 284 provided: “The provisions of this act shall be null, void and of no force and effect on or after June 30, 2015.” However, S.L. 2015, ch. 33, § 1 repealed S.L. 2013, ch. 284, § 3, effective July 1, 2015.

Effective Dates.

Section 2 of S.L. 1980, ch. 44 declared an emergency. Approved March 5, 1980.

Section 2 of S.L. 1983 (Ex. Sess.), ch. 4 declared an emergency. Approved May 19, 1983.

Section 4 of S.L. 1993, ch. 245 declared an emergency. Approved March 27, 1993.

Section 2 of S.L. 2005, ch. 129 declared an emergency. Approved March 23, 2005.

Section 2 of S.L. 2012, ch. 310 declared an emergency. Approved April 5, 2012.

CASE NOTES

Authority of county board.

Emergency rulemaking.

Handbook adopted defectively.

Authority of County Board.

Although §§ 67-5203 (now this section), 67-5203A (now § 67-5229), 67-5206 (now § 67-5230), 67-5207 (now § 67-5278) and 67-5208 (now § 67-5232) give the board of commissioners the authority to interpret statutes under its rulemaking provisions, these sections did not cover the board of commissioner's actions here in concluding the county was not responsible to pay any further amounts to owners of residential care facility for their care of indigents, as there is no procedural mechanism in either the indigency statutes or this chapter which permits the board of commissioners to issue a declaratory ruling on a legal issue and, by submitting only the legal question, the parties were requesting an advisory opinion from the board of commissioners on matters which were largely factual. *Shobe v. Board of Comm'rs*, 126 Idaho 654, 889 P.2d 88 (1995).

Emergency Rulemaking.

The Idaho department of health and welfare clearly complied with the emergency rulemaking provisions in adopting rules and regulations for pre-admission screening of nursing home patients for mental illness. *Idaho Health Care Ass'n v. Sullivan*, 716 F. Supp. 464 (D. Idaho 1989).

Handbook Adopted Defectively.

Where an administrative agency's policy and procedures manual was not adopted pursuant to the procedural requirements of this section, the agency's handbook had to be construed as merely an internal guideline capable of being changed by an agency head when necessary, not having

the force and effect of law; since the manual did not have the force and effect of law, no cause of action could be based on its alleged violation. *Service Employees Int'l Local 6 v. Idaho Dep't of Health & Welfare*, 106 Idaho 756, 683 P.2d 404 (1984).

Cited *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-5222. Public participation. — (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall afford all interested persons reasonable opportunity to submit data, views and arguments, orally or in writing. The agency shall receive comments for not less than twenty-one (21) days after the date of publication of the notice of proposed rulemaking in the bulletin.

(2) When promulgating substantive rules, the agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or an agency. The request must be made in writing and be within fourteen (14) days of the date of publication of the notice of proposed rulemaking in the bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later. An opportunity for oral presentation need not be provided when the agency has no discretion as to the substantive content of a proposed rule because the proposed rule is intended solely to comply:

- (a) with a controlling judicial decision or court order; or
- (b) with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule.

History.

I.C., § 67-5222, as added by 1992, ch. 263, § 12, p. 783.

§ 67-5223. Interim legislative review — Statement of economic impact. — (1) After notice of proposed rulemaking is filed with the coordinator, the coordinator, after making technical corrections as authorized in section 67-5202, Idaho Code, shall provide the notice, accompanied by the full text of the rule under consideration in legislative format, as well as a statement of the substance of the intended action, to the director of legislative services. If the proposed rulemaking is based upon a requirement of federal law or regulation, a copy of that specific federal law or regulation shall accompany the submission to the director of legislative services. The director of legislative services shall analyze and refer the material under consideration to the germane joint subcommittee created in section 67-454, Idaho Code.

(2) An agency shall prepare and deliver to the germane joint subcommittee a statement of economic impact with respect to a proposed rule if the germane joint subcommittee files a written request with the agency for such a statement. The statement shall contain an evaluation of the costs and benefits of the rule, including any health, safety, or welfare costs and benefits.

(3) An agency shall prepare for inclusion with the filing of the proposed rule change a statement of economic impact on all proposed rules in which a fee or charge is imposed or increased. The cost/benefit analysis shall include reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs borne by citizens, or the private sector or both. The adequacy of the contents of the statement of economic impact in subsections (1) and (2) [(2) and (3)] of this section is not subject to judicial review and the accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

(4) An agency proposing to adopt amendments to materials previously incorporated by reference in a rule shall prepare for inclusion with the filing of the proposed rule change a brief written synopsis that details the substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. This synopsis shall accompany the

submission to the director of legislative services and shall be provided to the germane joint subcommittee created in [section 67-454, Idaho Code](#).

History.

[I.C., § 67-5223](#), as added by 1992, ch. 263, § 13, p. 783; am. 1994, ch. 271, § 3, p. 834; am. 1996, ch. 159, § 24, p. 502; am. 1999, ch. 21, § 2, p. 29; am. 2008, ch. 183, § 2, p. 555; am. 2010, ch. 280, § 1, p. 756; am. 2016, ch. 367, § 1, p. 1077.

STATUTORY NOTES

Cross References.

Director of legislative services, § 67-701.

Amendments.

The 2008 amendment, by ch. 183, substituted “After notice of proposed rulemaking is filed with the coordinator, the coordinator, after making technical corrections as authorized in [section 67-5202, Idaho Code](#), shall provide the same notice” for “At the same time that notice of proposed rulemaking is filed with the coordinator, the agency shall provide the same notice” at the beginning of subsection (1).

The 2010 amendment, by ch. 280, added the subsection (3) designation, and therein added the first two sentences, and in the last sentence, inserted “in subsections (1) and (2) of this section” and added “and the accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.”

The 2016 amendment, by ch. 367, added subsection (4).

Compiler’s Notes.

The bracketed insertion in the third sentence in subsection (3) was added by the compiler to correct the internal reference.

Effective Dates.

Section 4 of S.L. 1999, ch. 21 declared an emergency. Approved February 19, 1999.

Section 3 of S.L. 2008, ch. 183 declared an emergency. Approved March 18, 2008.

OPINIONS OF ATTORNEY GENERAL

Nutrient Management Plan.

A nutrient management plan developed by the Idaho department of health and welfare pursuant to § 39-105 is subject to legislative review pursuant to this section and § 67-5291 and further, the limitation on authority granted to the department and the broad authority granted the board supports the conclusion that the plan is subject to review by the board. OAG 94-2.

§ 67-5224. Pending rule — Final rule — Effective date. — (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall consider fully all written and oral submissions respecting the proposed rule.

(2) Subject to the provisions of subsection (3) of this section, the agency shall publish the text of a pending rule and a notice of adoption of the pending rule in the bulletin. The notice of adoption of the pending rule shall consist of a concise explanatory statement containing:

- (a) Reasons for adopting the rule;
- (b) A statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for any changes;
- (c) The date on which the pending rule will become final and effective, as provided in subsection (5) of this section, and a statement that the pending rule may be rejected by concurrent resolution of the legislature;
- (d) An identification of any portion of the pending rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) The specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) Except as otherwise required in paragraph (g) of this subsection, a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding [section 67-5231, Idaho Code](#), the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule; or
- (g) If a notice of proposed rulemaking of the Idaho state tax commission, a specific description of any negative or positive fiscal impact greater

than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, notwithstanding [section 67-5231, Idaho Code](#), the absence or accuracy of a fiscal impact statement provided pursuant to this paragraph shall not affect the validity or the enforceability of the rule.

(3) With the permission of the coordinator, the agency need not publish in full the text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and note all changes that have been made.

(4) An agency shall not publish a pending rule until at least seven (7) days after the close of all public comment.

(5)(a) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, a pending rule shall become final and effective upon the conclusion of the legislative session at which the rule was submitted to the legislature for review, or as provided in the rule, but no pending rule adopted by an agency shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. A rule which is final and effective may be applied retroactively, as provided in the rule.

(b) When the legislature approves a pending rule pursuant to [section 67-5291, Idaho Code](#), the rule shall become final and effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution.

(c) Except as set forth in sections 67-5226 and 67-5228, Idaho Code, no pending rule or portion thereof imposing a fee or charge of any kind shall become final and effective until it has been approved by concurrent resolution.

(6) Each agency shall provide the administrative rules coordinator with a description of any pending rule or portion thereof imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. The administrative rules coordinator shall provide the legislature with a compilation of the descriptions provided by the agencies.

(7) At the conclusion of the legislative session or as soon thereafter as is practicable, the coordinator shall publish the date upon which the legislature adjourned sine die and rules became effective and a list of final rules becoming effective on a different date, as provided in [section 67-5224\(5\), Idaho Code](#), and temporary rules remaining in effect as provided in [section 67-5226\(3\), Idaho Code](#).

History.

[I.C., § 67-5224](#), as added by 1992, ch. 263, § 14, p. 783; am. 1995, ch. 196, § 1, p. 686; am. 1996, ch. 161, § 6, p. 529; am. 1999, ch. 20, § 1, p. 28; am. 2005, ch. 220, § 1, p. 696; am. 2013, ch. 284, § 2, p. 732; am. 2014, ch. 191, § 1, p. 515.

STATUTORY NOTES

Cross References.

State general fund, § 67-1205.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101](#).

Amendments.

The 2013 amendment, by ch. 284, in paragraph (2)(f), added the exception at the beginning and substituted “paragraph” for “subsection” near the end; and added paragraph (2)(g) and redesignated the subsequent paragraphs accordingly.

The 2014 amendment, by ch. 191, deleted “amended or modified” following “rejected” in paragraph (2)(c); and, in subsection (5), deleted “amends or modifies” following “approved” in paragraph (b) and deleted “amended or modified” following “approved” in paragraph (c).

Compiler’s Notes.

Section 3 of S.L. 2013, ch. 284 provided: “The provisions of this act shall be null, void and of no force and effect on or after June 30, 2015.” However, S.L. 2015, ch. 33, § 1 repealed S.L. 2013, ch. 284, § 3, effective July 1, 2015.

§ 67-5225. Rulemaking record. — (1) Prior to the adoption, amendment, or repeal of a rule, the agency shall prepare a rulemaking record. The record shall be maintained in the main offices of the agency.

(2) The rulemaking record shall be available for public inspection and copying. The rulemaking record must contain: (a) copies of all publications in the bulletin;

(b) all written petitions, submissions, and comments received by the agency and the agency's response to those petitions, submissions, and comments; (c) all written materials considered by the agency in connection with the formulation, proposal, or adoption of the rule; (d) a record of any oral presentations, any transcriptions of oral presentations, and any memorandum prepared by a presiding officer summarizing the contents of the presentations; and (e) any other materials or documents prepared in conjunction with the rulemaking.

(3) Except as otherwise required by a provision of law, the rulemaking record need not constitute the exclusive basis for agency action on that rule or for judicial review thereof.

(4) The record required in this section shall be maintained by the agency for a period of not less than two (2) years after the effective date of the rule.

History.

I.C., § 67-5225, as added by 1992, ch. 263, § 15, p. 783; am. 1995, ch. 270, § 1, p. 868.

§ 67-5226. Temporary rules. — (1) If the governor finds that:

- (a) Protection of the public health, safety, or welfare; or
- (b) Compliance with deadlines in amendments to governing law or federal programs; or
- (c) Conferring a benefit;

requires a rule to become effective before it has been submitted to the legislature for review the agency may proceed with such notice as is practicable and adopt a temporary rule, except as otherwise provided in [section 67-5229\(1\) \(d\), Idaho Code](#). The agency may make the temporary rule immediately effective. The agency shall incorporate the required finding and a concise statement of its supporting reasons in each rule adopted in reliance upon the provisions of this subsection.

(2) A rule adopted pursuant to subsection (1) of this section which imposes a fee or charge may become effective under this section before it has been approved by concurrent resolution only if the governor finds that the fee or charge is necessary to avoid immediate danger which justifies the imposition of the fee or charge.

(3) In no case shall a rule adopted pursuant to this section remain in effect beyond the conclusion of the next succeeding regular session of the legislature unless the rule is approved by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule which has become effective as provided in [section 67-5224\(5\), Idaho Code](#).

(4) Temporary rules shall be published in the first available issue of the bulletin.

(5) Temporary rules are not subject to the requirements of [section 67-5223, Idaho Code](#), provided that the administrative rules coordinator sends a copy of the temporary rules to the director of the legislative services office.

(6) Concurrently with the promulgation of a rule under this section, or as soon as reasonably possible thereafter, an agency shall commence the

promulgation of a proposed rule in accordance with the rulemaking requirements of this chapter, unless the temporary rule adopted by the agency will expire by its own terms or by operation of law before the proposed rule could become final.

History.

I.C., § 67-5226, as added by 1992, ch. 263, § 16, p. 783; am. 1995, ch. 196, § 2, p. 686; am. 1996, ch. 161, § 7, p. 529; am. 2000, ch. 203, § 2, p. 510; am. 2003, ch. 22, § 1, p. 92; am. 2010, ch. 20, § 4, p. 33; am. 2014, ch. 191, § 2, p. 515.

STATUTORY NOTES

Cross References.

Director of legislative services office, § 67-701.

Amendments.

The 2010 amendment, by ch. 20, in subsection (5), deleted “the agency adopting the temporary rule sends to the director of legislative services a copy of the temporary rule at the same time the agency sends the temporary rule to the office of” after “provided that” and substituted “sends a copy of the temporary rules to the director of the legislative services office” for “for publication in the bulletin.”

The 2014 amendment, by ch. 191, deleted “amended or modified” following “approved” in subsections (2) and (3).

Effective Dates.

Section 2 of S.L. 2003, ch. 22 declared an emergency. Approved February 18, 2003.

§ 67-5227. Variance between pending rule and proposed rule. — An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject of agency action and were reasonably able from that notification to determine whether their interests could be affected by agency action on that subject.

History.

I.C., § 67-5227, as added by 1992, ch. 263, § 17, p. 783; am. 1993, ch. 216, § 106, p. 587; am. 1996, ch. 161, § 8, p. 529.

§ 67-5228. Exemption from regular rulemaking procedures. — An agency may amend a pending rule to correct typographical errors, transcription errors, or clerical errors without compliance with regular rulemaking procedures when the amendments are approved by the coordinator. Such amendments become incorporated in the pending rule upon publication in the bulletin.

History.

I.C., § 67-5228, as added by 1992, ch. 263, § 18, p. 783; am. 1996, ch. 161, § 9, p. 529.

§ 67-5229. Incorporation by reference. — (1) If the incorporation of its text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient, an agency may incorporate by reference in its rules and without republication of the incorporated material in full, all or any part of:

- (a) A code, standard or rule adopted by an agency of the United States;
- (b) A code, standard or rule adopted by any nationally recognized organization or association;
- (c) A code or standard adopted by Idaho statute or authorized by Idaho statute for adoption by rule; or
- (d) A final rule of a state agency; provided however, that a state agency shall not adopt a temporary rule incorporating by reference a rule of that agency that is being or has been repealed unless the rule providing for the incorporation has been reviewed and approved by the legislature.

(2) The agency shall, as part of the rulemaking:

- (a) Include in the notice of proposed rulemaking a brief written synopsis of why the incorporation is needed; and
- (b) Note where an electronic copy can be obtained or provide an electronic link to the incorporated materials that at a minimum will be posted on the agency's website or included in the rule that is published in the administrative code on the website of the office of the administrative rules coordinator; and
- (c) If otherwise unavailable, note where copyrighted or other proprietary materials can be viewed or purchased.

(3) The incorporated material shall be identified with specificity and shall include the date when the code, standard or rule was published, approved or became effective. If the agency subsequently wishes to adopt amendments to previously incorporated material, it shall comply with the rulemaking procedures of this chapter.

(4) Unless prohibited by other provisions of law, the incorporated material is subject to legislative review in accordance with the provisions of [section 67-5291, Idaho Code](#), and shall have the same force and effect as a rule.

History.

[I.C., § 67-5203A](#), as added by 1980, ch. 212, § 2, p. 481; am. and redesign. 1992, ch. 263, § 19, p. 783; am. 2000, ch. 203, § 1, p. 510; am. 2010, ch. 280, § 2, p. 756.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 280, added paragraph (2)(a) and made related redesignations; rewrote present paragraph (2)(b), which formerly read: “Note where copies of the incorporated material may be obtained or electronically accessed”; and rewrote present paragraph (2)(c), which formerly read: “If otherwise unavailable, provide one (1) copy of the incorporated material to the Idaho supreme court law library.”

Compiler’s Notes.

This section was formerly compiled as § 67-5203A and was amended and redesignated as § 67-5229 by § 19 of S.L. 1992, ch. 263, effective July 1, 1993.

Effective Dates.

Section 4 of S.L. 2000, ch. 203 provided that the act shall be in full force and effect on and after July 1, 2000.

CASE NOTES

Authority of County Board.

Although §§ 67-5203 (now § 67-5221), 67-5203A (now this section), 67-5206 (now § 67-5230), 67-5207 (now § 67-5278) and 67-5208 (now § 67-5232) give the board of commissioners the authority to interpret statutes under its rule making provisions, these sections did not cover the board of commissioner’s actions here in concluding the county was not responsible

to pay any further amounts to owners of residential care facility for their care of indigents, as there is no procedural mechanism in either the indigency statutes or this chapter which permits the board of commissioners to issue a declaratory ruling on a legal issue and by submitting only the legal question, the parties were requesting an advisory opinion from the board of commissioners on matters which were largely factual. *Shobe v. Board of Comm'rs*, 126 Idaho 654, 889 P.2d 88 (1995).

§ 67-5230. Petition for adoption, amendment, repeal, or waiver of rules. — (1) Any person may petition an agency requesting the adoption, amendment, or repeal of a rule. The agency shall:

- (a) Deny the petition in writing, stating its reasons for the denial; or
- (b) Initiate rulemaking proceedings in accordance with this chapter.

(2) Any person may petition an agency for a waiver of or variance from a specified rule or rules if the granting of the waiver would not conflict with or violate Idaho law and is consistent with at least one (1) of the following considerations:

- (a) In the petitioner's specific circumstances, the application of a certain rule or rules is unreasonable and would impose undue hardship or burden on the petitioner;
- (b) The petitioner proposes an alternative that, in the opinion of the agency, will afford substantially equal protection of health, safety, and welfare intended by the particular rule for which the waiver or variance is requested; or
- (c) The waiver or variance requested would test an innovative practice or model that will, in the opinion of the agency, generate meaningful evidence for the agency in consideration of a rule change.

(3) In response to a petition filed pursuant to subsection (2) of this section, the agency shall:

- (a) Deny the petition in writing, stating the reasons for the denial; or
- (b) Approve the petition and grant a waiver of or variance from the rule, in whole or in part, and specify whether any conditions are placed on the waiver or variance or whether a specific time period for the waiver or variance is established.

(4) An agency shall approve or deny a petition filed pursuant to this section or initiate rulemaking proceedings in accordance with this chapter within twenty-eight (28) days after submission of the petition, unless the agency's rules are adopted by a multimember agency board or commission

whose members are not full-time officers or employees of the state, in which case the agency shall take action on the petition no later than the first regularly scheduled meeting of the board or commission that takes place seven (7) or more days after submission of the petition. If an agency requests additional information from the petitioner, the time period specified in this subsection shall begin anew.

(5) Following the granting of a waiver or variance, the agency shall consider a rule change that will allow all similarly situated persons to derive the same benefits granted to the petitioner.

(6) An agency decision denying a petition is a final agency action.

History.

1965, ch. 273, § 6, p. 701; am. and redesign. 1992, ch. 263, § 21, p. 783; am. 1995, ch. 270, § 2, p. 868; am. 2020, ch. 277, § 1, p. 811.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 277, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

This section was formerly compiled as § 67-5206 and was amended and redesignated as § 67-5230 by § 21 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

Authority of County Board.

Although §§ 67-5203 (now § 67-5221), 67-5203A (now § 67-5229), 67-5206 (now this section), 67-5207 (now § 67-5278) and 67-5208 (now § 67-5232) give the board of commissioners the authority to interpret statutes under its rule making provisions, these sections did not cover the board of commissioner's actions here in concluding the county was not responsible to pay any further amounts to owners of residential care facility for their care of indigents, as there is no procedural mechanism in either the

indigency statutes or this chapter which permits the board of commissioners to issue a declaratory ruling on a legal issue, and by submitting only the legal question, the parties were requesting an advisory opinion from the board of commissioners on matters which were largely factual. *Shobe v. Board of Comm'rs*, 126 Idaho 654, 889 P.2d 88 (1995).

§ 67-5231. Invalidity of rules not adopted in compliance with this chapter — Time limitation. — (1) Rules may be promulgated by an agency only when specifically authorized by statute. A temporary or final rule adopted and becoming effective after July 1, 1993, is voidable unless adopted in substantial compliance with the requirements of this chapter.

(2) A proceeding, either administrative or judicial, to contest any rule on the ground of noncompliance with the procedural requirements of this chapter must be commenced within two (2) years from the effective date of the rule.

History.

I.C., § 67-5231, as added by 1992, ch. 263, § 22, p. 783; am. 1996, ch. 161, § 10, p. 529.

CASE NOTES

Gaming update.

Rule void.

Gaming Update.

Organization argued that the gaming update was invalid because it broadened gaming rules by incorporating additional requirements; however, the supreme court concluded that the gaming update did not prescribe a legal standard. The gaming update merely explained rules that were set forth in the *Idaho Administrative Code*. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 142 Idaho 659, 132 P.3d 416 (2006).

Rule Void.

Trial court properly granted summary judgment to mining companies in their declaratory judgment action against the Idaho department of environmental quality (DEQ), which claimed that the DEQ's total maximum daily load (TMDL) for a river basin was void; the TMDL was properly considered a rule under § 67-5201 because it (1) had wide coverage, (2) was applied generally and uniformly, (3) operated only in

future cases, (4) prescribed a legal standard not provided by the enabling statute, (5) expressed new agency policy, and (6) implemented and interpreted existing law, and the rule was void under this section, because it was not adopted in substantial compliance with the requirements of this chapter. *Asarco Inc. v. State*, 138 Idaho 719, 69 P.3d 139 (2003).

Cited *State v. Haynes*, 159 Idaho 36, 355 P.3d 1266 (2015).

§ 67-5232. Declaratory rulings by agencies. — (1) Any person may petition an agency for a declaratory ruling as to the applicability of any statutory provision or of any rule administered by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action.

History.

1965, ch. 273, § 8, p. 701; am. and redesign. 1992, ch. 263, § 23, p. 783.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5208 and was amended and redesignated as § 67-5232 by § 23 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

Authority of County Board.

Although §§ 67-5203 (now § 67-5221), 67-5203A (now § 67-5229), 67-5206 (now § 67-5230), 67-5207 (now § 67-5278) and 67-5208 (now this section) give the board of commissioners the authority to interpret statutes under its rule making provisions, these sections did not cover the board of commissioner's actions in concluding the county was not responsible to pay any further amounts to owners of residential care facility for their care of indigents, as there is no procedural mechanism in either the indigency statutes or this chapter which permits the board of commissioners to issue a declaratory ruling on a legal issue and by submitting only the legal question, the parties were requesting an advisory opinion from the board of commissioners on matters which were largely factual. *Shobe v. Board of Comm'rs*, 126 Idaho 654, 889 P.2d 88 (1995).

§ 67-5233 — 67-5239. [Reserved.]

§ 67-5240. Contested cases. — A proceeding by an agency, other than the public utilities commission or the industrial commission, that may result in the issuance of an order is a contested case and is governed by the provisions of this chapter, except as provided by other provisions of law.

History.

I.C., § 67-5240, as added by 1992, ch. 263, § 24, p. 783.

STATUTORY NOTES

Cross References.

Industrial commission, § 72-501 et seq.

Public utilities commission, § 61-201 et seq.

CASE NOTES

Definition.

Final order.

Procedures not required.

Definition.

To be a “contested case,” the decision by an agency as to whether a bidder is entitled to the return of its bid security must “[determine] the legal rights, duties, privileges, immunities, or other legal interests” of specific persons, pursuant to § 67-5201. Whether or not that decision determines legal rights, duties, privileges, immunities or other legal interests requires a two-step analysis. First, has the legislature granted the agency the authority to determine the particular issue? Second, does the agency decision on the issue determine “the legal rights, duties, privileges, immunities, or other legal interests” of one or more persons? Not all decisions of particular

applicability by an agency determine a person's legal rights, duties, privileges, immunities, or other legal interests. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003); *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Because the power to impose certain specific conditions upon an application for an encroachment permit, including, but not limited to, provision of bonds and construction of traffic signals, is within the scope of the legislature's grant of authority to the transportation department to regulate the safe use of and access to controlled access highways, and because the department's denial or approval of the encroachment permit application determines the legal rights and interests of a property owner in accessing his property from a state highway and is, thus, an "order" under § 67-5201, the department's review of the application was a "contested case" and judicial review of the department's action on the permit application is governed by this section. *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Final Order.

Administrative remedies had not been exhausted where the state transportation department had not issued a final order regarding whether a bidder and its surety were entitled to the return of their bid bond after the bidder had discovered a mistake in its bid where the two documents in the record that could arguably have constituted a final order were the August 14, 2000, letter written by the department's counsel and the September 14, 2000, letter entitled "Final Report" written by a roadway design engineer. Because neither of those persons was the "agency head," they could only issue either a recommended order or a preliminary order; thus, neither letter was a recommended order that became final upon review by the agency head. *Westway Constr., Inc. v. Idaho Transp. Dep't*, 139 Idaho 107, 73 P.3d 721 (2003).

Procedures Not Required.

The department of health and welfare was not required to follow the procedures of this chapter governing contested cases when it denied the plaintiff's request to participate in a group therapy program. *Maresh v. State*, 132 Idaho 221, 970 P.2d 14 (1998).

Cited Dupont v. Idaho State Bd. of Land Comm'rs, 134 Idaho 618, 7 P.3d 1095 (2000); Laughy v. Idaho DOT, 149 Idaho 867, 243 P.3d 1055 (2010).

§ 67-5241. Informal disposition. — (1) Unless prohibited by other provisions of law:

- (a) an agency or a presiding officer may decline to initiate a contested case;
- (b) any part of the evidence in a contested case may be received in written form if doing so will expedite the case without substantially prejudicing the interests of any party;
- (c) informal disposition may be made of any contested case by negotiation, stipulation, agreed settlement, or consent order. Informal settlement of matters is to be encouraged;
- (d) the parties may stipulate as to the facts, reserving the right to appeal to a court of competent jurisdiction on issues of law.

(2) An agency or a presiding officer may request such additional information as required to decide whether to initiate or to decide a contested case as provided in subsection (1) of this section.

(3) If an agency or a presiding officer declines to initiate or decide a contested case under the provisions of this section, the agency or the officer shall furnish a brief statement of the reasons for the decision to all persons involved. This subsection does not apply to investigations or inquiries directed to or performed by law enforcement agencies defined in [section 74-101\(7\), Idaho Code](#).

(4) The agency may not abdicate its responsibility for any informal disposition of a contested case. Disposition of a contested case as provided in this section is a final agency action.

History.

[I.C., § 67-5241](#), as added by 1992, ch. 263, § 25, p. 783; am. 1993, ch. 216, § 107, p. 587; am. 2000, ch. 342, § 13, p. 1146; am. 2006, ch. 352, § 4, p. 1071; am. 2015, ch. 141, § 176, p. 379.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 352, substituted “section 9-337(7)” for “section 9-337(6)” in subsection (3).

The 2015 amendment, by ch. 141, substituted “74-101” for “9-337” in subsection (3).

CASE NOTES**Contested Case.**

Proceedings before the industrial commission are not “contested cases” under this chapter; therefore, the industrial commission was not required to comply with subsection (3) of this section and § 67-5242. *Swett v. St. Alphonsus Reg’l Med. Ctr.*, 136 Idaho 74, 29 P.3d 385 (2001).

Cited *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

§ 67-5242. Procedure at hearing. — (1) In a contested case, all parties shall receive notice that shall include:

- (a) a statement of the time, place, and nature of the hearing;
- (b) a statement of the legal authority under which the hearing is to be held; and
- (c) a short and plain statement of the matters asserted or the issues involved.

(2) The agency head, one (1) or more members of the agency head, or one (1) or more hearing officers may, in the discretion of the agency head, be the presiding officer at the hearing.

(3) At the hearing, the presiding officer:

- (a) Shall regulate the course of the proceedings to assure that there is a full disclosure of all relevant facts and issues, including such cross-examination as may be necessary.
- (b) Shall afford all parties the opportunity to respond and present evidence and argument on all issues involved, except as restricted by a limited grant of intervention or by a prehearing order.
- (c) May give nonparties an opportunity to present oral or written statements. If the presiding officer proposes to consider a statement by a nonparty, the presiding officer shall give all parties an opportunity to challenge or rebut it and, on motion of any party, the presiding officer shall require the statement to be given under oath or affirmation.
- (d) Shall cause the hearing to be recorded at the agency's expense. Any party, at that party's expense, may have a transcript prepared or may cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.
- (e) May conduct all or part of the hearing by telephone, television, or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place.

(4) If a party fails to attend any stage of a contested case, the presiding officer may serve upon all parties notice of a proposed default order. The notice shall include a statement of the grounds for the proposed order. Within seven (7) days after service of the proposed order, the party against whom it was issued may file a written petition requesting the proposed order to be vacated. The petition shall state the grounds relied upon. The presiding officer shall either issue or vacate the default order promptly after the expiration of the time within which the party may file a petition. If the presiding officer issues a default order, the officer shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party.

History.

1965, ch. 273, § 9, p. 701; am. and redesign. 1992, ch. 263, § 26, p. 783.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5209 and was amended and redesignated as § 67-5242 by § 26 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

[Applicability.](#)

[Hearing.](#)

[Notice.](#)

[Official notice.](#)

[Prejudicial error.](#)

[Venue.](#)

[Applicability.](#)

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county

board of commissioners did not violate the Idaho administrative procedure act, specifically this section, in not allowing the applicants to communicate with the board during its site visit; the county board of commissioners was not an agency, as defined by § 67-5201; therefore, the requirements mandated by this section were inapplicable. *Noble v. Kootenai County*, 148 Idaho 937, 231 P.3d 1034 (2010).

Hearing.

While a public utility is entitled to a hearing prior to a commission determination that its filed rates are improper, it is not so entitled where the commission simply dismisses a defective application for a rate increase without prejudice to refile of the corrected application. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

The tax commission's decision to refer for prosecution a case involving failure to file a state income tax return did not trigger the hearing requirement of this section. *State v. Staples*, 112 Idaho 105, 730 P.2d 1025 (Ct. App. 1986).

Notice.

Where the notice proposed to suspend the defendants' license for 60 days for violation of the gambling provision, the Idaho department of law enforcement's notice of hearing reasonably informed the defendants of the issues and consequences confronting them at the hearing. *State, Dep't of Law Enforcement v. Engberg*, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

The purpose of the notice requirement in this section is to inform parties of the particular facts and issues to be addressed in the hearing, allowing an opportunity to prepare a defense. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

Where, in an action to revoke defendants' liquor license a petition to revoke and a notice of revocation were personally served upon defendants more than four months before the hearing, and where three weeks before the hearing, a notice of hearing was mailed to defendants, taken together, the information contained in the three documents satisfied the notice requirement of the section. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

Although the organizations argued that the Idaho lottery commission never charged them with failing to keep checks, but merely with failing to provide documents, the notice was sufficient to satisfy the requirements of due process and this chapter by providing a short and plain statement of the matters asserted or the issues involved. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

Official Notice.

Where the public utilities commission took into consideration historical development of electrical rate structuring and made its considerations in light of current political, economic and environmental realities, it did not contravene this section and § 67-5210 as to matters which may be officially noticed in a proceeding. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Prejudicial Error.

A claimant's contention that the record failed to disclose whether the appeals examiner considered any state memoranda or data was without merit, where the claimant failed to show whether any such material even existed, and she failed to show prejudicial error. *Guillard v. Department of Emp.*, 100 Idaho 647, 603 P.2d 981 (1979).

Venue.

Where there is no particularized showing that unfair prejudice resulted from the agency's choice of venue, the court of appeals will not disturb its eventual decisions. *Pence v. Idaho State Horse Racing Comm'n*, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

This section provides only that an agency must provide notice of the time, place, and nature of a hearing. It does not fix venue in particular locations. *Pence v. Idaho State Horse Racing Comm'n*, 109 Idaho 112, 705 P.2d 1067 (Ct. App. 1985).

Cited *Swisher v. State Dep't of Env'tl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977); *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985); *Department of Health & Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987); *Cooper v. Board of Prof'l Discipline of Idaho State Bd. of Med.*, 134 Idaho 449, 4 P.3d 561 (2000); *Dupont v. Idaho State Bd. of Land Comm'rs*, 134 Idaho 618, 7 P.3d 1095 (2000).

OPINIONS OF ATTORNEY GENERAL

Adoption Proceeding.

This act applies to contested cases; 18-month permanency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, [42 U.S.C.S. 675\(5\)](#) do not fall within the scope of “contested cases” as defined in this chapter.. OAG 88-9.

§ 67-5243. Orders not issued by agency head. — (1) If the presiding officer is not the agency head, the presiding officer shall issue either:

- (a) A recommended order, which becomes a final order only after review by the agency head in accordance with [section 67-5244, Idaho Code](#); or
- (b) A preliminary order, which becomes a final order unless reviewed in accordance with [section 67-5245, Idaho Code](#).

(2) The order shall state whether it is a preliminary order or a recommended order.

(3) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of a recommended order or a preliminary order within fourteen (14) days of the service date of that order. The presiding officer shall render a written order disposing of the petition. The petition is deemed denied if the presiding officer does not dispose of it within twenty-one (21) days after the filing of the petition.

History.

[I.C., § 67-5243](#), as added by 1992, ch. 263, § 27, p. 783; am. 2010, ch. 255, § 1, p. 646.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 255, substituted “within fourteen (14) days of the service date of that order” for “within fourteen (14) days of the issuance of that order” in subsection (3).

§ 67-5244. Review of recommended orders. — (1) A recommended order shall include a statement of the schedule for review of that order by the agency head or his designee. The agency head shall allow all parties to file exceptions to the recommended order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(2) Unless otherwise required, the agency head shall either: (a) issue a final order in writing within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties or for good cause shown; (b) remand the matter for additional hearings; or (c) hold additional hearings.

(3) The agency head on review of the recommended decision shall exercise all the decision-making power that he would have had if the agency head had presided over the hearing.

History.

I.C., § 67-5244, as added by 1992, ch. 263, § 28, p. 783.

CASE NOTES

Cited *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996); *Dupont v. Idaho State Bd. of Land Comm'rs*, 134 Idaho 618, 7 P.3d 1095 (2000).

§ 67-5245. Review of preliminary orders. — (1) A preliminary order shall include:

(a) A statement that the order will become a final order without further notice; and

(b) The actions necessary to obtain administrative review of the preliminary order.

(2) The agency head, upon his own motion may, or, upon motion by any party shall, review a preliminary order, except to the extent that:

(a) Another statute precludes or limits agency review of the preliminary order; or

(b) The agency head has delegated his authority to review preliminary orders to one (1) or more persons.

(3) A petition for review of a preliminary order must be filed with the agency head, or with any person designated for this purpose by rule of the agency, within fourteen (14) days after the service date of the preliminary order unless a different time is required by other provision of law. If the agency head on his own motion decides to review a preliminary order, the agency head shall give written notice within fourteen (14) days after the issuance of the preliminary order unless a different time is required by other provisions of law. The fourteen (14) day period for filing of notice is tolled by the filing of a petition for reconsideration under [section 67-5243\(3\), Idaho Code](#).

(4) The basis for review must be stated on the petition. If the agency head on his own motion gives notice of his intent to review a preliminary order, the agency head shall identify the issues he intends to review.

(5) The agency head shall allow all parties to file exceptions to the preliminary order, to present briefs on the issues, and may allow all parties to participate in oral argument.

(6) The agency head shall:

(a) Issue a final order in writing, within fifty-six (56) days of the receipt of the final briefs or oral argument, whichever is later, unless the period is waived or extended with the written consent of all parties, or for good cause shown;

(b) Remand the matter for additional hearings; or

(c) Hold additional hearings.

(7) The head of the agency or his designee for the review of preliminary orders shall exercise all of the decision-making power that he would have had if the agency head had presided over the hearing.

History.

I.C., § 67-5245, as added by 1992, ch. 263, § 30, p. 783; am. 2010, ch. 255, § 2, p. 646.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 255, substituted “after the service date of the preliminary order” for “after the issuance of the preliminary order” in the first sentence in subsection (3).

§ 67-5246. Final orders — Effectiveness of final orders. — (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.

(2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.

(3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in [section 67-5245, Idaho Code](#). If the preliminary order is reviewed, the agency head shall issue a final order.

(4) Unless otherwise provided by statute or rule, any party may file a motion for reconsideration of any final order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.

(5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

(a) The petition for reconsideration is disposed of; or

(b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

(6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.

(7) A nonparty shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.

(8) The provisions of this section do not preclude an agency from taking immediate action to protect the public interest in accordance with the

provisions of [section 67-5247, Idaho Code](#).

History.

[I.C., § 67-5246](#), as added by 1992, ch. 263, § 31, p. 783; am. 2010, ch. 255, § 3, p. 646.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 255, in subsections (4) and (5), substituted “service date” for “issuance.”

CASE NOTES

[Judicial review.](#)

[Motion for reconsideration.](#)

[Judicial Review.](#)

Because the administrator of the division of motor vehicles is not the “agency head” of the Idaho transportation department, a memorandum decision by him is not a final, appealable order. [Laughy v. Idaho DOT, 149 Idaho 867, 243 P.3d 1055 \(2010\)](#).

[Motion for Reconsideration.](#)

Because a board of county commissioners does not fall within the definition of “agency” as found in this chapter, the provisions of this section, empowering “agencies” to act on motions for reconsideration, did not authorize the board to reconsider its earlier order unless this section was made applicable to the board by some other statute. [Arthur v. Shoshone County, 133 Idaho 854, 993 P.2d 617 \(Ct. App. 2000\)](#).

Under subsection (4), a petition for reconsideration is not disposed of until there is a decision on the merits of the petition. Agreement to consider the petition within that timeframe is not sufficient. Where irrigation district filed its petition for reconsideration on May 11, 2011, the department of water resources had twenty-one days from that date (until June 1, 2011) within which to decide the petition on the merits. Because the department’s director did not issue a written decision disposing of the petition for

reconsideration by June 1, 2011, the petition was deemed denied. *A&B Irrigation Dist. v. Idaho Dep't of Water Res.*, 154 Idaho 652, 301 P.3d 1270 (2012).

Cited *Erickson v. Idaho Bd. of Registration*, 146 Idaho 852, 203 P.3d 1251 (2009); *State v. Glodowski*, — Idaho —, 457 P.3d 917 (Ct. App. 2019).

§ 67-5247. Emergency proceedings. — (1) An agency may act through an emergency proceeding in a situation involving an immediate danger to the public health, safety, or welfare requiring immediate agency action. The agency shall take only such actions as are necessary to prevent or avoid the immediate danger that justifies the use of emergency contested cases.

(2) The agency shall issue an order, including a brief, reasoned statement to justify both the decision that an immediate danger exists and the decision to take the specific action. When appropriate, the order shall include findings of fact and conclusions of law.

(3) The agency shall give such notice as is reasonable to persons who are required to comply with the order. The order is effective when issued.

(4) After issuing an order pursuant to this section, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(5) Unless otherwise required by a provision of law, the agency record need not constitute the exclusive basis for agency action in emergency contested cases or for judicial review thereof.

History.

I.C., § 67-5247, as added by 1992, ch. 263, § 32, p. 783.

§ 67-5248. Contents of orders. — (1) An order must be in writing and shall include:

(a) A reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings.

(b) A statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief.

(2) Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding.

(3) All parties to the contested case shall be served with a copy of the order. The order shall be accompanied by proof of service stating the service date, each party who was served and the method(s) of service.

History.

1965, ch. 273, § 12, p. 701; am. and redesign. 1992, ch. 263, § 33, p. 783; am. 2010, ch. 255, § 4, p. 646.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 255, in subsection (3), substituted “shall be served” for “shall be provided” and added the last sentence.

Compiler’s Notes.

This section was formerly compiled as § 67-5212 and was amended and redesignated as § 67-5248 by § 33 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

[Conclusion of law.](#)

Evidence in the record.

Final decisions.

Findings of fact.

Fitness of lawyers.

Modifying conditional use permits.

Notice.

Requirements.

Conclusion of Law.

A determination by the department of law enforcement that a driver “refused to take a chemical test of his breath and blood to determine the alcoholic content of his blood” was a conclusion of law and not a finding of fact, and the determination being unsupported by findings of fact will be set aside. *Mills v. Holliday*, 94 Idaho 17, 480 P.2d 611 (1971).

It is consistent with the board of professional discipline of the state medical board’s statutory obligation to render a reasoned decision to require the board to identify facts as well as inferences drawn from the facts upon application of its expertise and judgment which underlies its decision. Such an explanation is essential to meaningful judicial review and it is a logical adjunct to the agency’s statutory duty to supplant its decision with findings of fact and conclusions of law; thus board must delineate its own findings as the basis for its contrary conclusion to that of the hearing officer. *Woodfield v. Board of Professional Discipline*, 127 Idaho 738, 905 P.2d 1047 (Ct. App. 1995).

Evidence in the Record.

Director of the department of law enforcement acted within the mandates of this chapter and provided findings necessary to support his conclusion where it was sufficiently clear from the record that his rejection of the hearing officer’s finding and finding that a violation of § 23-1010A (now repealed) did occur requiring revocation of establishment’s liquor license were supported by the transcript of witness’ testimony. *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and, thus, they were not final decisions and did not trigger the limitation period provided for in subsection (b) of § 67-5215 (now repealed). *Soloaga v. Bannock County*, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Findings of Fact.

City failed to properly make factual findings where they did not determine any facts, but only made recitations of evidence which could be used to support a finding without an affirmative statement that the agency was finding the fact testified to. *Crown Point Dev. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007).

Board of county commissioner's determination that a hospital was entitled to medical indigency benefits for some period of time was vacated and remanded, where the determination did not show the necessary findings of fact and conclusions of law. *Medical Indigency Application of C.H. v. Bd. of Comm'rs of Gem Cty.*, 164 Idaho 801, 435 P.3d 1121 (2019).

Fitness of Lawyers.

The procedure to be used in character and fitness determinations of lawyers is not governed by this section, since this section does not apply to the state bar board of commissioners as they are a part of the judicial, rather than the executive, branch. *Dexter v. Idaho State Bd. of Comm'rs*, 116 Idaho 790, 780 P.2d 112 (1989).

Modifying Conditional Use Permits.

Given the fact that counties have been granted the power to grant conditional use permits, coupled with the need for flexibility in land use planning and the lack of a prohibition on when conditions may be changed, counties have the authority to grant new conditional use permits which modify existing permits. *Chambers v. Kootenai County Bd. of Comm'rs*, 125 Idaho 115, 867 P.2d 989 (1994).

There is no basis in the statutory scheme for requiring proof of changed circumstances before a modification to an existing conditional use permit

may be ordered. *Chambers v. Kootenai County Bd. of Comm'rs*, 125 Idaho 115, 867 P.2d 989 (1994).

Notice.

Where there was no indication or certificate in the record that a speed letter mailed to plaintiff's counsel was in fact mailed or served, the uncertainty of the notice given requires that the notice be held defective and inadequate to start the running of the appeal time. *Cortez v. Owyhee County*, 117 Idaho 1034, 793 P.2d 707 (1990).

Requirements.

A party is entitled to a final decision containing findings of fact and conclusions of law before seeking judicial review, and, where a transcript did not contain either a final decision or the required findings of fact and conclusions of law, the district court erred in finding that one commissioner's motion to deny medical indigency assistance, made at the conclusion of a hearing regarding an application for such assistance and upon which no vote was taken, constituted notice of the commissioner's decision. *Cortez v. Owyhee County*, 117 Idaho 1034, 793 P.2d 707 (1990).

Director of the Idaho department of water resources gave a reasoned statement, under this section, supporting a curtailment order, because he (1) provided record statements supporting his findings and (2) identified findings supporting his conclusions of law. *Rangen, Inc. v. Idaho Dep't of Water Res. (In re Distrib. of Water to Water Right Nos. 36-02551 & 36-07694)*, 160 Idaho 119, 369 P.3d 897 (2016).

Cited *Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 513 P.2d 627 (1973).

§ 67-5249. Agency record. — (1) An agency shall maintain an official record of each contested case under this chapter for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law.

(2) The record shall include:

(a) all notices of proceedings, pleadings, motions, briefs, petitions, and intermediate rulings;

(b) evidence received or considered;

(c) a statement of matters officially noticed;

(d) offers of proof and objections and rulings thereon;

(e) the record prepared by the presiding officer under the provisions of [section 67-5242, Idaho Code](#), together with any transcript of all or part of that record;

(f) staff memoranda or data submitted to the presiding officer or the agency head in connection with the consideration of the proceeding; and

(g) any recommended order, preliminary order, final order, or order on reconsideration.

(3) Except to the extent that this chapter or another statute provides otherwise, the agency record constitutes the exclusive basis for agency action in contested cases under this chapter or for judicial review thereof.

History.

[I.C., § 67-5249](#), as added by 1992, ch. 263, § 34, p. 783.

§ 67-5250. Indexing of precedential agency orders — Indexing of agency guidance documents. — (1) Unless otherwise prohibited by any provision of law, each agency shall index all written final orders that the agency intends to rely upon as precedent. The index and the orders shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. The orders shall be indexed by name and subject.

A written final order may not be relied on as precedent by an agency to the detriment of any person until it has been made available for public inspection and indexed in the manner described in this subsection.

(2) Unless otherwise prohibited by any provision of law, each agency shall index by subject all agency guidance documents. The index and the guidance documents shall be available for public inspection and copying at cost in the main office and each regional or district office of the agency. As used in this section, “agency guidance” means all written documents, other than rules, orders, and pre-decisional material, that are intended to guide agency actions affecting the rights or interests of persons outside the agency. “Agency guidance” shall include memoranda, manuals, policy statements, interpretations of law or rules, and other material that are of general applicability, whether prepared by the agency alone or jointly with other persons. The indexing of a guidance document does not give that document the force and effect of law or other precedential authority.

History.

1965, ch. 273, § 2, p. 701; am. 1980, ch. 204, § 1, p. 468; am. and redesign. 1992, ch. 263, § 35, p. 783; am. 1993, ch. 216, § 108, p. 587; am. 1995, ch. 270, § 3, p. 868.

STATUTORY NOTES

Compiler’s Notes.

This section was formerly compiled as § 67-5202 and was amended and redesignated as § 67-5250 by § 35 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

Availability for public inspection.

Public utilities commission.

Availability for Public Inspection.

The rules and regulations of an agency must be properly published and made available for public inspection before the doctrine of exhaustion of administrative remedies becomes applicable; therefore trial court could not rule as a matter of law on motion to dismiss that appellants had not complied with agency regulations and exhausted its administrative remedy in view of factual issue regarding whether or not the agency's regulations had been published. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

To satisfy the requirement that an agency ruling must be made available for public inspection in order to be given full force and effect, an agency must file in its central office a certified copy of each rule adopted and must "publish" all effective rules adopted by it. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

In satisfying its duty to publish its rules, an administrative agency must at least furnish state, district and county law libraries with complete sets of pertinent agency rules and regulations; if it fails to do so, its rules and regulations are without force and effect. *Williams v. State*, 95 Idaho 5, 501 P.2d 203 (1972).

Public Utilities Commission.

Pursuant to this section and § 61-501, the public utilities commission may issue rules providing for procedures to be used in assuring compliance with the requirement for full and adequate prefiling of applications. *Intermountain Gas Co. v. Idaho Pub. Utils. Comm'n*, 98 Idaho 718, 571 P.2d 1119 (1977).

§ 67-5251. Evidence — Official notice. — (1) The presiding officer may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.

(2) Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interests of any party.

(3) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(4) Official notice may be taken of:

(a) any facts that could be judicially noticed in the courts of this state; and (b) generally recognized technical or scientific facts within the agency's specialized knowledge.

Parties shall be notified of the specific facts or material noticed and the source thereof, including any staff memoranda and data. Notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material noticed. Parties must be afforded a timely and meaningful opportunity to contest and rebut the facts or material so noticed. When the presiding officer proposes to notice staff memoranda or reports, a responsible staff member shall be made available for cross-examination if any party so requests.

(5) The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

History.

1965, ch. 273, § 10, p. 701; am. and redesign. 1992, ch. 263, § 36, p. 783.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5210 and was amended and redesignated as § 67-5251 by § 36 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

Evidence.

Exhibits.

Failure to object.

Hearsay.

Judicial notice.

Medical indigency.

Official notice.

Oral testimony judicially cognizable.

Testimony.

Evidence.

The pharmacist's conviction for possession of drug paraphernalia, which was a ground for discipline under subdivisions (1)(c)(iii) and (1)(f) of § 54-1726, was not subject to collateral attack in an administrative agency action, and the judgment of conviction for possession of drug paraphernalia was admissible under this section. *Brown v. Idaho State Bd. of Pharmacy*, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

Exhibits.

An unemployment compensation claimant was not prejudiced by the admission of exhibits, where there was absolutely no indication that the appeals examiner or the industrial commission relied to any extent on the exhibits, but, to the contrary, the commission relied exclusively on the claimant's statements made at the hearings on the record. *Guillard v. Department of Emp.*, 100 Idaho 647, 603 P.2d 981 (1979).

Failure to Object.

When the claimant did not object when certain exhibits were introduced into the record by the appeals examiner, thereafter the referee and the industrial commission were required to include such exhibits as part of the record of the proceedings before the commission. *Guillard v. Department of Emp.*, 100 Idaho 647, 603 P.2d 981 (1979).

Hearsay.

The liberality as to the admission of evidence allows hearsay evidence to be admitted in hearings before the industrial commission at the discretion of the hearing officer. *Hoyt v. Morrison-Knudsen Co.*, 100 Idaho 659, 603 P.2d 993 (1979).

Hearsay is admissible in hearings before the personnel commission and its hearing officer. *Lockhart v. State, Dep't of Fish & Game*, 127 Idaho 546, 903 P.2d 135 (Ct. App. 1995).

Although the industrial commission had the discretionary power to consider any type of reliable evidence having probative value, even if that evidence was not admissible in a court of law, the commission was given latitude to determine whether to admit hearsay evidence and was, thus, free to exclude hearsay testimony by a claimant's coworker. *Higgins v. Larry Miller Subaru-Mitsubishi*, 145 Idaho 1, 175 P.3d 163 (2007).

Judicial Notice.

Under subdivision (4) of this section, a county commission was entitled to take judicial notice of its own county ordinances dealing with planning and zoning, and district court erred in concluding otherwise. *Hubbard v. Canyon County Comm'rs*, 106 Idaho 436, 680 P.2d 537 (1984).

The examiner did not err in taking judicial notice of the defendants' beer and liquor licenses where the Idaho department of law enforcement is the agency which issued the license numbers to the defendants, the defendants' record in this case contained a copy of the defendants' licenses, and the defendants presented no evidence to dispute that they were the holders of the two licenses. *State, Dep't of Law Enforcement v. Engberg*, 109 Idaho 530, 708 P.2d 935 (Ct. App. 1985).

The fact that the proposed decision and order on the company's application for a water permit mentioned the post-hearing creation of a ground water unit did not taint the opinion, because creation of the unit was

a cognizable fact which the department of water resources was entitled to take notice of under subsection (4) of this section, and the proposed decision and order provided the company with notice that the existence of the unit was included in the department's deliberations, and the company made no objection or request for an additional hearing to meet the new information concerning the unit. *Collins Bros. Corp. v. Dunn*, 114 Idaho 600, 759 P.2d 891 (1988).

Medical Indigency.

An applicant for medical assistance bears the burden of proving medical indigency. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 107 Idaho 248, 688 P.2d 260 (Ct. App. 1984), rev'd on other grounds, 109 Idaho 299, 707 P.2d 410 (1985).

Official Notice.

Where the public utilities commission took into consideration historical development of electrical rate structuring and made its considerations in light of current political, economic and environmental realities, it did not contravene § 67-5209 (now § 67-5242) and this section as to matters which may be officially noticed in a proceeding. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Oral Testimony Judicially Cognizable.

Where two cost of service studies were subject of oral testimony but not admitted into evidence, the public utilities commission had them available for consideration, since they were judicially cognizable under this section. *Grindstone Butte Mut. Canal Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 175, 627 P.2d 804 (1981).

Testimony.

The blanket requirement of the county commissioners, for presentation of "expert" testimony in determining medical indigency, the necessity for medical treatment, and the reasonableness of the hospital bills, is not necessarily correct; the type of testimony warranted can only be determined on consideration of the facts in each case. *IHC Hosps. v. Board of Comm'rs*, 108 Idaho 136, 697 P.2d 1150, overruled on other grounds, *Intermountain Health Care v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

Cited *Shokal v. Dunn*, 109 Idaho 330, 707 P.2d 441 (1985); *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1985); *Department of Health & Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987); *Laurino v. Bd. of Prof'l Discipline*, 137 Idaho 596, 51 P.3d 410 (2002); *Kootenai Med. Ctr. v. Idaho Dep't of Health & Welfare*, 147 Idaho 872, 216 P.3d 630 (2009); *Wheeler v. Idaho Transp. Dep't*, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); *Masterson v. Idaho DOT (In re Masterson)*, 150 Idaho 126, 244 P.3d 625 (Ct. App. 2010); *Bell v. Idaho Transp. Dep't (In re Bell)*, 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011).

OPINIONS OF ATTORNEY GENERAL

Adoption Proceeding.

This act applies to contested cases; 18-month permanency planning dispositional hearings held pursuant to the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. 675(5), do not fall within the scope of “contested cases” as defined in the Administrative Procedure Act. OAG 88-9.

Public Disclosure.

Public records that are exempt from public disclosure are nevertheless subject to disclosure in a judicial or administrative proceedings, if they are subject to disclosure under the laws or rules of evidence and of discovery governing those proceedings. OAG 95-6.

RESEARCH REFERENCES

ALR. — Comment note on hearsay evidence in proceedings before state administrative agencies. 36 A.L.R.3d 12.

§ 67-5252. Presiding officer — Disqualification. — (1) Except as provided in subsection (4) of this section, any party shall have the right to one (1) disqualification without cause of any person serving or designated to serve as presiding officer, and any party shall have a right to move to disqualify for bias, prejudice, interest, substantial prior involvement in the matter other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other cause provided in this chapter or any cause for which a judge is or may be disqualified.

(2) Any party may petition for the disqualification of a person serving or designated to serve as presiding officer:

(a) within fourteen (14) days after receipt of notice indicating that the person will preside at the contested case; or

(b) promptly upon discovering facts establishing grounds for disqualification, whichever is later.

Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting designation of a presiding officer.

(3) A person whose disqualification for cause is requested shall determine in writing whether to grant the petition, stating facts and reasons for the determination.

(4) Where disqualification of the agency head or a member of the agency head would result in an inability to decide a contested case, the actions of the agency head shall be treated as a conflict of interest under the provisions of [section 74-404, Idaho Code](#).

(5) Where a decision is required to be rendered within fourteen (14) weeks of the date of a request for a hearing by state or federal statutes or rules and regulations, no party shall have the right to a disqualification without cause.

History.

I.C., § 67-5252, as added by 1992, ch. 263, § 37, p. 783; am. 1993, ch. 216, § 109, p. 587; am. 2015, ch. 141, § 177, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “74-404” for “59-704” in subsection (4).

CASE NOTES

Presiding Officer.

Neither statutes nor regulations require hearing officers who are attorneys to possess any experience or expertise in the issue involved in a hearing. *Rammell v. Idaho State Dep’t of Agric.*, 147 Idaho 415, 210 P.3d 523 (2009).

§ 67-5253. Ex parte communications. — Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party, except upon notice and opportunity for all parties to participate in the communication.

History.

1965, ch. 273, § 13, p. 701; am. and redesign. 1992, ch. 263, § 38, p. 783.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5213 and was amended and redesignated as § 67-5253 by § 38 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

Cited Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987); Eacret v. Bonner County, 139 Idaho 780, 86 P.3d 494 (2004).

§ 67-5254. Agency action against licensees. — (1) An agency shall not revoke, suspend, modify, annul, withdraw or amend a license, or refuse to renew a license of a continuing nature when the licensee has made timely and sufficient application for renewal, unless the agency first gives notice and an opportunity for an appropriate contested case in accordance with the provisions of this chapter or other statute.

(2) When a licensee has made timely and sufficient application for the renewal of a license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by a reviewing court.

(3) This section does not preclude an agency from: (a) taking immediate action to protect the public interest in accordance with [section 67-5247, Idaho Code](#); or (b) adopting rules, otherwise within the scope of its authority, pertaining to a class of licensees, including rules affecting the existing licenses of a class of licensees.

History.

1965, ch. 273, § 14, p. 701; am. and redesign. 1992, ch. 263, § 39, p. 783.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5214 and was amended and redesignated as § 67-5254 by § 39 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

[Due process.](#)

[Notice and opportunity to demonstrate compliance.](#)

[Sentence.](#)

Suspension of license.

Suspension prior to hearing.

Due Process.

Department of insurance had both subject matter and personal jurisdiction in proceeding; because the issue of the effect of the lack of a warning letter was not raised until appeal, after insurance agent had received notice of the department's allegations, presented evidence and received a ruling; there was no merit to insurance agent's due process assertion. *Knight v. Department of Ins.*, 124 Idaho 645, 862 P.2d 337 (Ct. App. 1993).

Where alcoholic beverage licensee submitted a check in payment of the fee for his license renewal, and he failed to make sure that there were sufficient funds in the account to pay the check upon presentment, ABC was not required to provide notice and an opportunity to be heard under this section before cancelling the erroneously issued license renewal. *Se/Tnor Iguana's, Inc. v. Idaho State Police Bureau of Alcohol Bev. Control*, 160 Idaho 290, 371 P.3d 344 (2016).

Notice and Opportunity to Demonstrate Compliance.

Where the commission agreed to reschedule the initial hearing from January 11, 1993 to January 29, 1993, to afford licensee an opportunity for an informal meeting to show compliance with the terms of its license and such a meeting was held and licensee was unable to show it had fully complied with its license agreement, commission provided licensee with the notice and opportunity to demonstrate compliance. *Idaho Potato Comm'n v. Russet Valley Produce, Inc.*, 127 Idaho 654, 904 P.2d 566 (1995).

Sentence.

Trial court did not abuse its discretion in sentencing defendant to 20 years in prison, with 10 years determinate, for each of seven counts, where four lewd conduct counts, a sexual battery count, and a forcible sexual penetration count were each punishable by up to life in prison and a separate sexual abuse count under this section was punishable by up to 25 years in prison. *Podsaid v. State Outfitters & Guides Licensing Bd.*, 159 Idaho 70, 356 P.3d 363 (2015).

Suspension of License.

The exception under 11 U.S.C.S. § 362(b)(4) to the automatic stay granted with regard to bankruptcy proceedings operated in favor of the department of insurance in a matter involving the suspension and revocation of an insurance agent's license, where the agent filed for bankruptcy prior to the suspension of his license and prior to the institution of proceedings to revoke same; where the department of insurance contended that it was seeking the revocation of agent's insurance license based solely on his alleged fraudulent activities, the court was willing to accept the state's representations. However, if it were to appear that the purpose of the administrative proceedings was to collect premiums allegedly withheld by agent for his own use to compensate the agent's victims, such activities would likely exceed the scope of the 11 U.S.C.S. § 362(b)(4) exception. *In re Fitch*, 123 Bankr. 61 (Bankr. D. Idaho 1991).

Suspension Prior to Hearing.

Where substantial evidence existed that an emergency situation existed at a licensed shelter home, the hearing officer's decision to suspend the license prior to the scheduled hearings required by § 39-3303 and this section did not deny the shelter's owners procedural due process, since, even if the suspension effectively terminated the owners' provisional license and adversely affected their economic interests, such interests were of lesser importance than the safety and welfare of the residents. *Van Orden v. State, Dep't of Health & Welfare*, 102 Idaho 663, 637 P.2d 1159 (1981).

§ 67-5255. Declaratory rulings by agencies. — (1) Any person may petition an agency for a declaratory ruling as to the applicability of any order issued by the agency.

(2) A petition for a declaratory ruling does not preclude an agency from initiating a contested case in the matter.

(3) A declaratory ruling issued by an agency under this section is a final agency action.

History.

I.C., § 67-5255, as added by 1992, ch. 263, § 40, p. 783.

CASE NOTES

Cited *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, 193 P.3d 853 (2008).

§ 67-5256 — 67-5269. [Reserved.]

§ 67-5270. Right of review. — (1) Judicial review of agency action shall be governed by the provisions of this chapter unless other provision of law is applicable to the particular matter.

(2) A person aggrieved by final agency action other than an order in a contested case is entitled to judicial review under this chapter if the person complies with the requirements of **sections 67-5271 through 67-5279, Idaho Code.**

(3) A party aggrieved by a final order in a contested case decided by an agency other than the industrial commission or the public utilities commission is entitled to judicial review under this chapter if the person complies with the requirements of **sections 67-5271 through 67-5279, Idaho Code.**

History.

I.C., § 67-5270, as added by 1992, ch. 263, § 42, p. 783.

CASE NOTES

Applicability of other provision of law.

Contested case.

Exhaustion.

Final order.

Party.

Standing.

Subject matter jurisdiction.

Applicability of Other Provision of Law.

Because § 58-405 prohibits APA review of land board timber sales and this section defers to that prohibition, an organization could not claim standing to challenge a timber sale by the land board as an aggrieved party under the APA. *Selkirk-Priest Basin Ass'n v. State ex rel. Batt*, 128 Idaho 831, 919 P.2d 1032 (1996).

Contested Case.

District court lacked jurisdiction to review oversize load permits issued by the transportation department, because subsection (2) of this section does not provide jurisdiction to challenge an order in a contested case, even where the contested case is conducted under informal procedures. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

Exhaustion.

Section 23-933 does not prescribe a process for dealing with removal of an applicant from a priority list and, therefore, presents no administrative remedy to exhaust before seeking judicial redress of the administrative action. *Fuchs v. State, Dep't of Ida. State Police*, 152 Idaho 626, 272 P.3d 1257 (2012).

Final Order.

Because there was no final order from the real estate appraiser board in the administrative proceedings against the appraiser, the appraiser's appeal was dismissed. An order denying a motion to dismiss is not a final order. *Williams v. Bd. of Real Estate Appraisers (In re Williams)*, 149 Idaho 675, 239 P.3d 780 (2010).

Party.

Where residents sent a number of written comments and objections to the transportation department to oppose a refiner's application for an overlegal permit, but never filed as intervenors or any other kind of party during the application and hearing process, the residents were not parties entitled to judicial review under subsection (3) of this section. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

Standing.

Highway district clearly had standing to appeal a board of county commissioner's decision to dissolve it. The possible effect upon the

highway district was apparent in that it could have been destroyed. *Sandpoint Indep. Highway Dist. v. Bd. of County Comm'rs*, 138 Idaho 887, 71 P.3d 1034 (2003).

The Idaho transportation department has standing to appeal the denial of an administrative license suspension without alleging, or providing evidence of, prejudice to one of its substantial rights. *State v. Kalani-Keegan*, 155 Idaho 297, 311 P.3d 309 (Ct. App. 2013).

Subject Matter Jurisdiction.

District court and appellate court lacked subject matter jurisdiction to consider the driver's petition for judicial review, because the driver's petition was premature and the record did not demonstrate that the hearing officer expressed his intention of sustaining the license suspension prior to the driver's filing of the petition for judicial review. *Johnson v. State (In re Johnson)*, 153 Idaho 246, 280 P.3d 749 (Ct. App. 2012).

Cited *Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 993 P.2d 596 (1999); *Evans v. Bd. of Comm'rs*, 137 Idaho 428, 50 P.3d 443 (2002); *Sagewillow, Inc. v. Idaho Dep't of Water Res.*, 138 Idaho 831, 70 P.3d 669 (2003); *Archer v. Dep't of Transp. (In re Archer)*, 145 Idaho 617, 181 P.3d 543 (Ct. App. 2008); *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009); *Wheeler v. Idaho Transp. Dep't*, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); *McDaniel v. State (In re Driver's License Suspension of McDaniel)*, 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010); *Burton v. State*, 149 Idaho 746, 240 P.3d 933 (Ct. App. 2010); *Wilkinson v. State*, 151 Idaho 784, 264 P.3d 680 (Ct. App. 2011); *Podsaid v. State Outfitters & Guides Licensing Bd.*, 159 Idaho 70, 356 P.3d 363 (2015); *Erickson v. The Idaho Bd. of Licensure of Prof'l Engineers & Prof'l Land Surveyors*, — Idaho —, 450 P.3d 292 (2019).

Decisions Under Prior Law

Agency.

Appeals.

Application.

Conclusions of law.

Contested case.

Denial of application for medical indigency assistance.

Discharge of employee.

Discretion of commission.

Erroneous advice provided by agency.

Evidence.

Examination of record.

Exhaustion of administrative remedies.

Final decisions.

Findings.

In general.

Inadequate findings of fact.

Method of review.

Record of agency proceedings.

Remand.

Remand to administrative board.

Reversal.

Right to judicial appeal.

Scope of review.

Standard of review.

Subdivision plat applicant.

Trial de novo.

Zoning.

Agency.

Subsection (3) of § 23-1015 did not make the county an “agency” for the purposes of former laws so as to grant judicial review of a decision to a person other than an applicant. *Briggs v. Golden Valley Land & Cattle Co.*, 97 Idaho 427, 546 P.2d 382 (1976).

Under former law, the board of correction was not an “agency” within the meaning of the Administrative Procedures Act, and the judicial review provision did not apply to it. Therefore, there was no appeal to the district court from decisions of the board of correction. *Carman v. State, Comm’n of Pardons & Parole*, 119 Idaho 642, 809 P.2d 503 (1991).

When the commission of pardons and parole was exercising the powers and duties delegated to it by the board of correction in matters involving parole and probation, it was exercising powers granted to the board under Idaho Const., Art. X, § 5. Therefore, it was not an “agency” within the meaning of the Administrative Procedures Act, and former law inapplicable to a parole decision of the commission of pardons and parole. *Carman v. State, Comm’n of Pardons & Parole*, 119 Idaho 642, 809 P.2d 503 (1991).

Appeals.

Given the close alignment of the commission of pardons and parole with the Idaho board of correction, the fact that the commission was exercising the parole power delegated to it by the board, and the fact that the legislature found it necessary to specifically give authority to the commission to promulgate regulations pursuant to the Administrative Procedures Act, the supreme court of Idaho concluded that the commission’s parole and probation functions, as were those of the board of correction before it, were exempt from the appeal provision of former law. *Carman v. State, Comm’n of Pardons & Parole*, 119 Idaho 642, 809 P.2d 503 (1991).

Application.

The 30-day filing deadline in former law applied to the period of time allowed for filing a petition for judicial review in district court after a final decision of the administrative agency and did not apply to limit the time within which to request a hearing before the board of county commissioners. *University of Utah Hosp. v. Minidoka County*, 120 Idaho 91, 813 P.2d 902 (1991).

Conclusions of Law.

The finding of county commissioners that proposed change in zone classification was in accordance with the intent and policy of the comprehensive plan was not a finding of fact, but rather a conclusion of law

which, if erroneous, could be corrected on judicial review. [Love v. Board of County Comm'rs](#), 105 Idaho 558, 671 P.2d 471 (1983).

Contested Case.

The department of employment was not required or entitled to appeal the findings and recommendations of the commission of human rights, since a hearing before the commission on a sex discrimination claim, held before the commission was granted authority to issue orders, was not a “contested case.” [Hoppe v. Nichols](#), 100 Idaho 133, 594 P.2d 643 (1979).

Decision of board of county commissioners denying hospital its right to any notices required to be given under the Idaho medical indigency statutes, including notice of denial or notice of partial denial for county medical aid, was not reviewable since it did not involve a contested case. [Idaho Falls Consol. Hosps. v. Board of County Comm'rs](#), 104 Idaho 628, 661 P.2d 1227 (1983).

Denial of Application for Medical Indigency Assistance.

Although the legislature clearly provided that a petition for judicial review to the district court must be filed within 30 days after an administrative agency's final decision, both the Administrative Procedure Act and the Medical Indigency Act made no provision as to the time within which a hospital, health care provider or applicant for assistance must request a hearing before the board of commissioners after its application for medical indigency assistance had been denied. In the absence of a county ordinance adopting the guidelines, or any guidance or direction from the legislature, the legislature did not intend to set a specific time limit within which a request for hearing must be made. [University of Utah Hosp. v. Minidoka County](#), 120 Idaho 91, 813 P.2d 902 (1991).

Discharge of Employee.

Where the evidence in the record supported board of education's findings that campus security chief's conduct, which included use of racial slurs during conversations with reporter, evidenced traits of employment incompatibility and that it adversely affected the welfare of college, the board's conclusion, that “good cause” existed to discharge him, was not arbitrary, capricious, or an abuse of discretion. [Allen v. Lewis-Clark State College](#), 105 Idaho 447, 670 P.2d 854 (1983).

Discretion of Commission.

The fact that no harm came to the clients involved, and that restitution was subsequently made to the former broker, did not rule out suspension of a broker's license; and, since the real estate commission had the power to revoke the broker's license for violation of its regulations, a five-month suspension was not an abuse of discretion which would require reversal. *Staff of Idaho Real Estate Comm'n v. Parkinson*, 100 Idaho 96, 593 P.2d 1000 (1979).

The failure to include medical expenses in the determination of a budget deficit was not arbitrary and capricious. *Hayman v. State, Dep't of Health & Welfare*, 100 Idaho 710, 604 P.2d 724 (1979).

Erroneous Advice Provided by Agency.

Where applicants for zoning change made attempts to determine the status of their first application and were informed by the county that they would have to submit a new application, since a member of the public pursuing an action before an agency should not be penalized for following erroneous advice given by the agency and there was nothing in the record evidencing an intent by applicants to relinquish their rights under the first application for zoning change, they did not waive their right to appeal with respect to such application. *Soloaga v. Bannock County*, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Evidence.

Although evidence of the city council's prior approval of applications for rezoning by other developers was not in the original record of the city council hearing at which the council denied the plaintiff developer's rezoning application, the reviewing court could properly consider the evidence about the other applications, since the information was of public record at the time of the plaintiff's hearing before the city council, the city council was certainly aware of its own previous actions in approving those other applications, and, in fact, the city council had stipulated that the facts concerning the other applications were true and correct. *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32, 655 P.2d 926 (1982).

In situations where no procedural irregularities before the administrative agency were alleged and the case heard as an administrative appeal, the

hearing must be confined to the record; admitting additional evidence when procedural irregularities were not alleged in essence results in an impermissible trial de novo. *Clow v. Board of County Comm'rs*, 105 Idaho 714, 672 P.2d 1044 (1983).

Generally, a review is confined to the record unless there were alleged procedural irregularities before the agency and under those circumstances the statute stated that proof may be taken in the court; accordingly, where the issues in a particular action were limited and no procedural irregularities before the agency were alleged by the parties before or during the appeal hearing, the district court erred when it admitted additional evidence and entered findings of fact and conclusions of law, even if the parties had agreed to allow the court to hear additional evidence, since former law required that any additional evidence be presented before the agency. *Clow v. Board of County Comm'rs*, 105 Idaho 714, 672 P.2d 1044 (1983).

Where a developer appealed to the district court from an adverse decision by the county board of commissioners on his rezoning application, the district court did not err in refusing to allow the developer to augment the record before the district court with minutes of previous planning and zoning commission meetings, where the developer made no application to the court to present additional evidence as required by former law did not show why the evidence was not presented at the hearing before the county commissioners. *Drake v. Craven*, 105 Idaho 734, 672 P.2d 1064 (Ct. App. 1983).

Under former law, the district court erred in permitting additional evidence to be submitted on appeal; if the additional evidence was material and there was good reason for failure to present it at the proceeding before the board of commissioners, former law permitted the district court to order the taking of the additional evidence by the agency, which may then modify its findings and conclusions based upon the additional evidence. However, the district court could not hear the additional evidence for the first time on appeal and make its own findings of fact and conclusions of law. *Daley v. Blaine County*, 108 Idaho 614, 701 P.2d 234 (1985).

Where the applicants' property was the only property in the area which had not been rezoned, the board of county commissioner's decision to rezone the property as commercial, even though it was contrary to the

existing comprehensive plan, was supported by substantial evidence and was not clearly erroneous. *Ferguson v. Board of County Comm'rs*, 110 Idaho 785, 718 P.2d 1223 (1986).

Where, in the hospital's appeal of the board of county commissioners' denial of funds for medical indigency, the transcript of the board's hearing contained an extended debate regarding the board's authority to limit the issues before it, and the hospital did not suggest what other evidence of irregularities would have been submitted, the hospital was not prejudiced by the district court's refusal to expand the record by entertaining the hospital's proffer of alleged irregularities in procedure. *University of Utah Hosp. v. Board of County Comm'rs*, 113 Idaho 441, 745 P.2d 1062 (Ct. App. 1987).

District court properly admitted extraneous evidence relevant to procedural deficiency in the process of determining whether action involving application for zoning change should be remanded for final determination on the merits where, after making initial application, applicants were informed by county that such application was voided by moratorium, the county conducted no hearings nor were there ever any findings of fact or conclusions of law entered with respect to the application, for in effect the suspension of the application by the county was a procedural irregularity. *Soloaga v. Bannock County*, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Examination of Record.

Where the record on appeal indicated that a medically disabled plaintiff was afforded services, education and a rehabilitation plan as provided by law and that the plan was not completed by plaintiff, although the division of vocational rehabilitation did everything required of it, there was nothing in the record requiring reversal or modification of the division's decision denying him further vocational rehabilitation benefits as there were no constitutional or statutory provisions that were violated, the decision was not in excess of the division's or agency's authority, and there were no unlawful procedures followed by the division; nothing in the record constituted error in view of the evidence submitted and the record considered as a whole. *Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc.*, 117 Idaho 126, 785 P.2d 690 (Ct. App. 1990).

Exhaustion of Administrative Remedies.

State employees not able to appeal a grievance to the personnel commission had exhausted all administrative remedies available within the agency and were entitled to judicial review under the [State Administrative Procedure Act](#). [Sheets v. Idaho Dep't of Health & Welfare](#), 114 Idaho 111, 753 P.2d 1257 (1988).

In routine tax assessment complaints, the pursuit of statutory administrative remedies is a condition precedent to judicial review; however, the rule that administrative remedies must be exhausted before the district court will hear a case is a general rule and has been deviated from in some cases. [Fairway Dev. Co. v. Bannock County](#), 119 Idaho 121, 804 P.2d 294 (1990).

The exceptions to the exhaustion of administrative remedies doctrine did not apply where the issue was the correctness of tax assessments. In such a case, the district court did not acquire subject matter jurisdiction until all the administrative remedies have been exhausted. [Fairway Dev. Co. v. Bannock County](#), 119 Idaho 121, 804 P.2d 294 (1990).

Final Decisions.

Where letters from county officials to petitioners for zoning change referred to initial zoning application as being voided by zoning moratorium and informed them that the process initiated by their first application had been truncated, they contained nothing setting forth facts or conclusions of law regarding the first application for a zoning change, and, thus, they were not final decisions and did not trigger the limitation period provided for in former law. [Soloaga v. Bannock County](#), 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Findings.

Where an incorrect standard of proof was applied by the hearing officer, in a hearing to determine eligibility for aid to dependent children, the district court erred in substituting its own findings and the case had to be remanded to an administrative hearing officer to resolve a conflict in the evidence. [Tappen v. State, Dep't of Health & Welfare](#), 98 Idaho 576, 570 P.2d 28 (1977).

Judicial review of an administrative order is confined to the record under former law; accordingly, a district court improperly substituted its own

findings of fact for those made by a hearing officer, where the review of the district court was made on the record of the administrative officer and the findings of the hearing officer were clear, concise, dispositive and supported by the evidence. *Van Orden v. State, Dep't of Health & Welfare*, 102 Idaho 663, 637 P.2d 1159 (1981).

If there were no findings of fact and conclusions in the record, there was no way for a reviewing court to determine whether an agency's findings and conclusions were arbitrary and capricious or clearly erroneous; thus, as a general rule, in circumstances in which there are no findings or the findings are clearly inadequate, the district court should at least initially remand the case to the agency. To hold otherwise would have been to authorize the district court to substitute its judgment for that of the agency despite an express provision prohibiting such action. *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32, 655 P.2d 926 (1982).

Where the findings of fact were insufficient to support the conclusion that zoning amendment was in accordance with the county comprehensive plan, the district court's decision reversing the decision of the county commission was appropriate because of the commission's failure to make written findings in support of its conclusions and, pursuant to former law, the case was remanded to the county commissioners for further proceedings. *Love v. Board of County Comm'rs*, 105 Idaho 558, 671 P.2d 471 (1983).

Where a review of the record clearly demonstrated that claimant did not have income and resources available which would enable him to pay for the emergency medical services provided for his wife, the district court did not err in finding there was no basis in fact for the commissioners' decision to deny claimant's application for benefits on the basis that he was not a medically indigent person. *Carpenter v. Twin Falls County*, 107 Idaho 575, 691 P.2d 1190 (1984), superseded by statute on other grounds as stated in *IHC Hospitals, Inc. v. Teton County*, 139 Idaho 188, 75 P.3d 1198 (2003).

Where the board of county commissioners denied an application for a conditional use permit and zoning variances to allow a residential structure to be erected in a flood plain management district, and such denial was based on evidence that the lot could not be determined to be buildable without detailed engineering data, and the applicant failed to supply such data which was required by a county ordinance, the district court erred in

ordering the issuance of the conditional use permit and variances, since the decision of the board was neither clearly erroneous nor arbitrary and capricious under former law. *Daley v. Blaine County*, 108 Idaho 614, 701 P.2d 234 (1985).

A district court may only reverse a zoning decision if one of six grounds set forth in former law was found to exist. *Love v. Board of County Comm'rs*, 108 Idaho 728, 701 P.2d 1293 (1985).

Where the chairman of the board of county commissioners filed an affidavit of the findings of the board in denying a claim of medical indigency under § 31-3505, in lieu of a formal statement of findings as required under former law, and such affidavit included all of the information necessary for judicial review of the claim, the trial court properly treated the affidavit as reflective of a formal determination of the board. *Intermountain Health Care, Inc. v. Board of County Comm'rs*, 108 Idaho 757, 702 P.2d 795 (1985).

The district court's review of findings of the governing body charged with rezoning was governed by former law regarding judicial review of contested cases; the findings could only be overturned where they are clearly erroneous in view of the evidence in the record. *Ferguson v. Board of County Comm'rs*, 110 Idaho 785, 718 P.2d 1223 (1986).

Where the department of water resource's determination that it was not in the public interest to use the water from the geothermal aquifer to irrigate crops was not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, the district court erred in reversing the director's decision. *Collins Bros. Corp. v. Dunn*, 114 Idaho 600, 759 P.2d 891 (1988).

In General.

An appeal, which was not filed in either the county in which a hearing was held or in the county in which a final decision was made, could not be perfected. *Briggs v. Golden Valley Land & Cattle Co.*, 97 Idaho 427, 546 P.2d 382 (1976).

Inadequate Findings of Fact.

Where the department of health's findings of fact were inadequate to support its decision, that nursing home exceeded Medicaid percentile caps

was due to inefficient operation, the matter was remanded to the department of health with instructions that the department should make specific findings of fact and conclusions of law with respect to the questions of whether nursing home was efficiently operated and to what extent its costs above the percentile cap were justified, based solely upon the present evidentiary record, without the taking of any new or additional evidence. *Idaho City Nursing Home v. Department of Health*, 124 Idaho 116, 856 P.2d 1283 (1993) (decision under former § 67-5215).

Method of Review.

Legislature, by passage of former law regarding administrative procedure, intended to make available a uniform method of reviewing administrative action, but did not intend to abolish those methods of review already in existence. *Mills v. Swanson*, 93 Idaho 279, 460 P.2d 704 (1969).

Where an administrative agency suspended a motorist's driver's license for his failure to submit to a blood-alcohol test after he was arrested for driving while intoxicated, the applicable standard for judicial review of the agency's decision under former law regarding judicial review of contested cases was the "clearly erroneous" standard of review, and a reviewing court would not be allowed to independently weigh the conflicting evidence to determine whether the state had carried its burden to show, by a preponderance of the evidence, that the chemical test was offered and refused. *Mason v. State Dep't of Law Enforcement*, 103 Idaho 748, 653 P.2d 803 (Ct. App. 1982).

The review of the denial of an application to rezone property was governed by the procedures set forth in former law regarding judicial review of contested cases. *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32, 655 P.2d 926 (1982).

Action by a county upon a medical indigency application was reviewable under the Administrative Procedure Act (APA); the APA provided that review must be sought by a petition filed in the district court. However, where administrative action reviewable under the APA was challenged by complaint rather than by a petition for judicial review, the proper court response was not to dismiss the complaint but to treat it as a petition governed by the APA. *St. Benedict's Hosp. v. County of Twin Falls*, 107 Idaho 143, 686 P.2d 88 (Ct. App. 1984).

The method of review set forth in this chapter, regarding review of contested cases, was the exclusive procedure for appealing an adverse zoning decision. *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984).

Record of Agency Proceedings.

A transcribed record was indispensable to meaningful judicial review of rezoning proceedings where the sufficiency of notice, adequacy of opportunity to present or to rebut evidence, or the existence of evidence supporting the agency's findings might have been put at issue. *Gay v. County Comm'rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Where no transcribable record was kept of a county rezoning hearing and, without such a record, a reviewing court could not determine that the interested parties received notice of all meetings at which information concerning the rezoning request was received, or that an opportunity to rebut such information was afforded, the county's decision authorizing the rezoning had to be set aside. *Gay v. County Comm'rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Where, due to the lack of an adequate record of what had transpired at the county level, the district judge was forced to take conflicting evidence, and to make findings, on how zoning proceedings were conducted and on what basis the county zoning commission had reached its decision, and the court then was required to review the propriety of the county's decision upon a record which the court itself had participated in creating, such a process was a fundamental distortion of the judicial review function, since developing the record of proceedings before an administrative agency, from conflicting evidence fell outside the purposes for which a reviewing court could have taken evidence under applicable portions of this section. *Gay v. County Comm'rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

In order for there to be effective judicial review of the quasi-judicial actions of zoning boards, there must have been a record of the proceedings and adequate findings of fact and conclusions of law. *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32, 655 P.2d 926 (1982).

Remand.

Under the Administrative Procedure Act, which was made applicable to indigent medical claims by former § 31-3505, when an appeal of an administrative rule was brought to a district court and the findings of fact to be reviewed were missing or inadequate the district court should have remanded the case to the county commission. *University of Utah Hosp. v. Clerk of Minidoka County*, 114 Idaho 662, 760 P.2d 1 (1988).

Where county submitted an affidavit setting out its claim that it was prejudiced in several different respects as a result of hospital's failure to timely file application on behalf of medically indigent person, such matter having been raised should have been remanded to county commissioners as required by former law regarding judicial review of contested cases for hearing and findings on the issue prejudice to the county. *University of Utah Hosp. v. Clerk of Minidoka County*, 114 Idaho 662, 760 P.2d 1 (1988).

Remand to Administrative Board.

Former law regarding judicial review of contested cases gave authority to the district court, in appropriate circumstances, to remand the matter to the administrative board for the taking of additional evidence and the making of additional findings and conclusions of law. *Balser v. Kootenai County Bd. of Comm'rs*, 110 Idaho 37, 714 P.2d 6 (1986).

Reversal.

Review of agency proceedings was limited; however, the reviewing court was obliged to reverse a decision if substantial rights of an individual had been prejudiced because the administrative findings, inferences, conclusions, or decisions were in violation of constitutional or statutory provisions. *H & V Eng'g, Inc. v. Idaho State Bd. of Professional Eng'rs & Land Surveyors*, 113 Idaho 646, 747 P.2d 55 (1987).

Judicial review pursuant to former law regarding judicial review of contested cases allowed a court to reverse or modify an agency decision only under limited circumstances, including a constitutional violation, action in excess of statutory authority, clearly erroneous findings of fact, an arbitrary and capricious decision or one characterized by an abuse of discretion. *Morgan v. Idaho Dep't of Health & Welfare*, 120 Idaho 6, 813 P.2d 345 (1991).

Right to Judicial Appeal.

Although defendants claimed that a hearing examiner was inclined to find in favor of the department of law enforcement in order to attract future cases and compensation from the department, this potential for bias was cured by the fact that the parties had the right to judicial appeal of any administrative decision manifesting an abuse of discretion, arbitrary and capricious disposition, or findings which were clearly erroneous in light of the evidence presented at the hearing. *State ex rel. Richardson v. Pierandozzi*, 117 Idaho 1, 784 P.2d 331 (1989).

Scope of Review.

Where appeal was taken not from the final action of the agency, but rather from an interim advisory ruling of the administrative agency, no appeal was taken from the final granting of the zoning permit, extensive hearings were held, some of which were public, and in almost all of which the protestants appeared and were permitted extensive testimony and argument, and the project had long since been completed and operative, the district court's review in the appeal of the zoning decision was governed by former law regarding judicial review of contested cases and the district court was bound by the record made before the board of county commissioners. *Idaho Frozen Foods v. Meander Point Homeowners Ass'n*, 109 Idaho 1072, 712 P.2d 1180 (1986).

The district court applied an incorrect standard of review when it held, as a matter of law, that a zoning amendment must conform exactly to the existing comprehensive plan. *Balser v. Kootenai County Bd. of Comm'rs*, 110 Idaho 37, 714 P.2d 6 (1986).

It was a well established rule in Idaho that review on appeal was limited to those issues raised before the lower tribunal and that an appellate court would not decide issues presented for the first time on appeal; that this rule was equally applicable to appeals of zoning decisions is made clear by former § 67-6521(d), which states that judicial review of the board's decision is governed by former law which confined the review by the district court to the record. *Balser v. Kootenai County Bd. of Comm'rs*, 110 Idaho 37, 714 P.2d 6 (1986).

Where the board of county commissioners had not rendered any final decision on an application for a planned unit development, but had only approved in principle the proposed development, retaining jurisdiction to

either approve or deny the final plan after they had reviewed it and placed such other restrictions on it as they deemed advisable, the appeal by the unincorporated association was premature, and the district court should have dismissed it. [South Fork Coalition v. Board of Comm'rs](#), 112 Idaho 89, 730 P.2d 1009 (1986).

Where the district court acted in an appellate capacity in a review under the Administrative Procedure Act, on further appeal from the district court's determination, the court of appeals reviewed the record independently of the district court's decision. [Madsen v. State, Dep't of Health & Welfare](#), 114 Idaho 182, 755 P.2d 479 (Ct. App. 1988).

In an appeal of a county planning and zoning commission's grant of a conditional use permit and zoning certificate for a veterinary clinic, the district court's role was to determine the propriety of the county's motion, but not to displace the county by "denying" the zoning certificate and conditional use permit directly. [Lowery v. Board of County Comm'rs](#), 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988).

In the absence of a hearing before the board of county commissioners, no record could be made, no findings of fact could be entered, and no record could be made upon which a district court could conduct its review under the statutes. [University of Utah Hosp. v. Minidoka County](#), 115 Idaho 409, 767 P.2d 252 (1987).

The district court sits as an appellate court in medical indigency cases, and was not authorized to take evidence on behalf of, or make findings of fact for a board of county commissioners. [University of Utah Hosp. v. Minidoka County](#), 115 Idaho 406, 767 P.2d 249 (1987).

Generally, where a district court acts in an appellate capacity under the Administrative Procedure Act, on further appeal from the district court's determination, the court of appeals reviews the record independent of the district court's decision. [Salinas v. Canyon County](#), 117 Idaho 218, 786 P.2d 611 (Ct. App. 1990).

Judicial review of an administrative order is confined to the record, and the reviewing court may not substitute its judgment for that of the administrative hearing officer on questions of fact. [Morgan v. Idaho Dep't of Health & Welfare](#), 120 Idaho 6, 813 P.2d 345 (1991).

Standard of Review.

The Administrative Procedure Act governs the standard of judicial review of an administrative decision. *Fuller v. State Dep't of Educ. Div. of Vocational Rehabilitation, Inc.*, 117 Idaho 126, 785 P.2d 690 (Ct. App. 1990).

Subdivision Plat Applicant.

The express provisions of former law limited a subdivision plat applicant from appealing an adverse decision seeking judicial review of the city council's action. *Curtis v. City of Ketchum*, 111 Idaho 27, 720 P.2d 210 (1986).

Trial De Novo.

Where district court ordered trial de novo because record of rezone hearing before defendants was inadequate for appeal on the record, the court erred in issuing such order since former law made no provisions for a trial de novo, ultimately limited the district court to either affirming the board decision, remanding for further proceedings, or reversing and modifying if substantial rights of the plaintiff were prejudiced, and since the other means of review permitted under former law were excluded under former § 67-6519. *Hill v. Board of County Comm'rs*, 101 Idaho 850, 623 P.2d 462 (1981).

Former law precluded the district court from making de novo factual determinations. *Balser v. Kootenai County Bd. of Comm'rs*, 110 Idaho 37, 714 P.2d 6 (1986).

Zoning.

The supreme court's decision in *Cooper v. Board of County Comm'rs*, 101 Idaho 407, 614 P.2d 947 (1980), that a denial of a rezone application was a quasi-judicial act which required procedural due process, could not be read as authorizing district courts to interfere with the substantive decision-making process in rezoning cases. To sanction such interference in the ordinary case would undermine the important role local agencies play in the land use planning process and possibly negate meaningful participation by the public in the decision-making process. *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32, 655 P.2d 926 (1982).

While a legislative zoning decision is not subject to direct judicial review, it nonetheless may be scrutinized by means of collateral actions such as declaratory actions. In such instances the decision will not be disturbed absent a clear showing that it is confiscatory, arbitrary, unreasonable or capricious. *Burt v. City of Idaho Falls*, 105 Idaho 65, 665 P.2d 1075 (1983).

Exhaustion of remedies under former law, prior to challenging validity of ordinance, was required in a zoning matter. *County of Ada v. Henry*, 105 Idaho 263, 668 P.2d 994 (1983).

In the annexation of land by a city, in the subsequent amendment of the comprehensive plan, and in the zoning of the annexed land, the city council acted in a legislative manner; such actions were not subject to direct judicial review. *Burt v. City of Idaho Falls*, 105 Idaho 65, 665 P.2d 1075 (1983).

Where three witnesses testified orally without objection before the board that the area where applicant was operating a tavern was zoned rural residential and one of the witnesses, after noting that he was familiar with the zoning of respondent's property and what uses were allowed under the ordinance in that particular zone area, testified that neither taverns, bars, nor retails sales of any type were allowed uses in a rural residential zone, there was competent evidence to support decision denying renewal of retail beer and wine license and district court erred in concluding otherwise. *Hubbard v. Canyon County Comm'rs*, 106 Idaho 436, 680 P.2d 537 (1984).

A landowner's action seeking a declaratory judgment interpreting § 67-6511 and a writ of mandamus requiring a city to accept his interpretation of the statute was in realty an appeal of a city's zoning decision and should have been reviewed only under the guidelines set forth in former law. *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984).

The proper procedure for a city challenging a decision of a zoning board was to file a petition for judicial review under former law and the trial court was limited to reviewing the factual record compiled in proceedings before the zoning board. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

A municipality or town was deemed to be an "aggrieved person" within the meaning of former law when appealing a decision of its zoning appeals

board. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

In reviewing a variance decision, the function of the reviewing court was to determine whether the zoning board's findings were supported by substantial evidence and, if so, whether the board's conclusions properly apply the zoning ordinance to the facts as found. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

General standards governing judicial review of administrative action were set forth in former law, but specific standards governing review of a zoning decision depended upon the nature of power exercised in making the decision. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

District court did not have jurisdiction to rule in the first instance that builder of proposed dairy operation was not prohibited from engaging in such a project by a zoning ordinance that was improperly amended, nor did it have jurisdiction to rule that there were not facts to support an estoppel defense, as both issues had to first be resolved by the zoning authorities in the county; review of any such determination was to be conducted by the district court pursuant to former chapter. *Jerome County ex rel. Bd. of Comm'rs v. Holloway*, 118 Idaho 681, 799 P.2d 969 (1990).

Since there was nothing in former law that provided that an intermediate agency action, such as a moratorium on applications for zoning changes, triggered the limitation period provided for in former law, the 60-day [now 28-day] limitation period of § 67-6519 did not apply to the county's refusal to go forward on petitioners' initial application for a zoning change and district court was correct in ordering county to consider application in light of ordinance in effect at time of initial application and for a final decision containing findings of fact and conclusions of law. *Soloaga v. Bannock County*, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

The mere act of reapplying for a zoning change did not manifest an intent to waive any rights that applicants may have had under the initial application, as a matter of law; therefore, the district court did not err by holding that applicants did not waive their rights to petition for judicial review of the proceeding with regard to the first application. *Soloaga v. Bannock County*, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

Where county was aware of the history of applicants' lengthy application process for zoning change including the initial application, applicants conceded that their rights under the first application were never placed in issue during the 1985 proceedings because the county had made it clear it had expected them to proceed under the 1984 ordinance and the record demonstrated the county considered initial application as void, it was unnecessary for applicants to exercise an act of futility by reasserting their rights under the initial application during the proceedings under the 1984 application and, thus, the questions relating to the first application were properly preserved for an appeal. *Soloaga v. Bannock County*, 119 Idaho 678, 809 P.2d 1157 (Ct. App. 1990).

§ 67-5271. Exhaustion of administrative remedies. — (1) A person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter.

(2) A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency action would not provide an adequate remedy.

History.

I.C., § 67-5271, as added by 1992, ch. 263, § 43, p. 783.

CASE NOTES

Declaratory relief.

Exceptions.

Interpretation of an ordinance.

Jurisdiction.

Purpose.

Declaratory Relief.

Actions for declaratory judgment are not intended as a substitute for a statutory procedure and such administrative remedies must be exhausted. *Regan v. Kootenai County*, 140 Idaho 721, 100 P.3d 615 (2004).

Exceptions.

A party must exhaust administrative remedies before resorting to the courts to challenge the validity of administrative acts. There are recognized exceptions to that rule in two instances: (a) when the interests of justice so require, and (b) when the agency acted outside its authority. *Regan v. Kootenai County*, 140 Idaho 721, 100 P.3d 615 (2004).

Where a developer filed suit for judicial review of the Idaho transportation department's (ITD) action on an encroachment permit approved with conditions, the developer was not required to exhaust his administrative remedies under this section before seeking review of the

ITD's order, because the ITD's rules did not provide a mechanism whereby an applicant, whose permit application had been approved subject to conditions, could challenge those conditions. *Lochsa Falls, L.L.C. v. State*, 147 Idaho 232, 207 P.3d 963 (2009).

Section 23-933 does not prescribe a process for dealing with removal of an applicant from a priority list and, therefore, presents no administrative remedy to exhaust before seeking judicial redress of the administrative action. *Fuchs v. State, Dep't of Ida. State Police*, 152 Idaho 626, 272 P.3d 1257 (2012).

Interpretation of an Ordinance.

Recognized exceptions to the exhaustion doctrine do not apply to cases where the question relates to the interpretation of an ordinance, since it is one within the zoning authority's specialization, and the administrative remedy is as likely as the judicial remedy to provide the wanted relief. *Regan v. Kootenai County*, 140 Idaho 721, 100 P.3d 615 (2004).

Jurisdiction.

Landowners' failure to exhaust administrative remedies deprived the district court of jurisdiction over their claim for declaratory relief to determine whether their private landing field and hangar were permissible uses of their property under a local zoning ordinance. The landowners could have applied for a text amendment to the ordinance, or zone change and conditional use permit to try to properly permit the use. *Regan v. Kootenai County*, 140 Idaho 721, 100 P.3d 615 (2004).

Failure to exhaust administrative remedies deprives a district court of subject matter jurisdiction. *Regan v. Kootenai County*, 140 Idaho 721, 100 P.3d 615 (2004).

District court properly concluded that it lacked subject matter jurisdiction to consider the taxpayers' request for a property tax refund where the taxpayers had not exhausted their administrative remedies; taxpayers had received a reassessment of their property despite their failure to appeal and were well aware of the value of their property, rendering any alleged confusion about their original assessment notice disingenuous. *Castrigno v. McQuade*, 141 Idaho 93, 106 P.3d 419 (2005).

Purpose.

The exhaustion doctrine, codified in this section, flows from a number of important policy considerations, such as, providing the opportunity for mitigating or curing errors without judicial intervention, deferring to the administrative processes established by the legislature and the administrative body, and the sense of comity for the quasi-judicial functions of the administrative body. *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

Cited *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 517, 915 P.2d 1375 (Ct. App. 1996); *Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 993 P.2d 596 (1999); *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012); *McInturff v. Shippy (In re CSRBA Case No. 49576)*, 165 Idaho 489, 447 P.3d 937 (2019).

RESEARCH REFERENCES

Idaho Law Review. — *Idaho Administrative Law: A Primer for Students and Practitioners*, Richard Henry Seamon. 51 Idaho L. Rev. 421 (2015).

§ 67-5272. Venue — Form of action. — (1) Except when required by other provision of law, proceedings for review or declaratory judgment are instituted by filing a petition in the district court of the county in which:

- (a) the hearing was held; or
- (b) the final agency action was taken; or
- (c) the aggrieved party resides or operates its principal place of business in Idaho; or
- (d) the real property or personal property that was the subject of the agency decision is located.

(2) When two (2) or more petitions for judicial review of the same agency action are filed in different counties or are assigned to different district judges in the same county, upon motion filed by any party to any of the proceedings for judicial review of the same agency action, the separate consideration of the petitions in different counties or by different district judges shall be stayed. The administrative judge in the judicial district in which the first petition was filed, after appropriate consultation with the affected district judges and the affected administrative judges, shall then order consolidation of the judicial review of the petitions before one (1) district judge in one (1) county in which a petition for judicial review was properly filed, at which time the stay shall be lifted.

History.

I.C., § 67-5272, as added by 1992, ch. 263, § 44, p. 783; am. 1995, ch. 270, § 4, p. 868.

CASE NOTES

Jurisdiction.

Resolution of all claims arising within the scope of the Snake River Basin Adjudication (SRBA) are within the exclusive jurisdiction of the SRBA district court, and the adjudication statutes provide that any supplemental adjudication of water rights within the scope of the SRBA

must be filed in the district court that originally heard the general adjudication. *Sagewillow, Inc. v. Idaho Dep't of Water Resources*, 135 Idaho 24, 13 P.3d 855 (2000).

Cited *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 517, 915 P.2d 1375 (Ct. App. 1996); *Gibson v. Ada County*, 142 Idaho 746, 133 P.3d 1211 (2006).

§ 67-5273. Time for filing petition for review. — (1) A petition for judicial review of a temporary or final rule may be filed at any time, except as limited by section 67-5231, Idaho Code.

(2) A petition for judicial review of a final order or a preliminary order that has become final when it was not reviewed by the agency head or preliminary, procedural or intermediate agency action under [section 67-5271\(2\), Idaho Code](#), must be filed within twenty-eight (28) days of the service date of the final order, the date when the preliminary order became final, or the service date of a preliminary, procedural or intermediate agency order, or, if reconsideration is sought, within twenty-eight (28) days after the service date of the decision thereon. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

(3) A petition for judicial review of a final agency action other than a rule or order must be filed within twenty-eight (28) days of the agency action, except as provided by other provision of law. The time for filing a petition for review shall be extended during the pendency of the petitioner's timely attempts to exhaust administrative remedies, if the attempts are clearly not frivolous or repetitious. A cross-petition for judicial review may be filed within fourteen (14) days after a party is served with a copy of the notice of the petition for judicial review.

History.

[I.C., § 67-5273](#), as added by 1992, ch. 263, § 45, p. 783; am. 1993, ch. 216, § 110, p. 587; am. 1995, ch. 270, § 5, p. 868; am. 1996, ch. 161, § 11, p. 529; am. 2010, ch. 255, § 5, p. 646.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 255, in the first sentence in subsection (2), twice substituted “service date” for “issuance” and inserted “the service date of” preceding “the decision.”

CASE NOTES

Not untimely.

Not timely.

Tolling of requirement.

Not Untimely.

Appeal from the granting of a livestock confinement permit should not have been dismissed as untimely because county commissioners caused confusion regarding the 28-day time period in their decision, and it was reasonable for an objector to read the decision as setting a certain date as the final date of appeal. *Halper v. Jerome County*, 143 Idaho 691, 152 P.3d 562 (2007).

Not Timely.

Where a final order of the board was issued, after which there was a motion for reconsideration, the ruling on which also was captioned “Final Order”, the time for appeal began to run when the first order was issued, not when it was served and not when the order disposing of the motion for reconsideration was issued. *Erickson v. Idaho Bd. of Registration*, 146 Idaho 852, 203 P.3d 1251 (2009).

City’s petition for judicial review was untimely because the twenty-eight day appeal period began to run when the department of water resources issued the original Order on Reconsideration; the department clearly stated the date that the order was issued. *City of Eagle v. Idaho Dep’t of Water Res.*, 150 Idaho 449, 247 P.3d 1037 (2011).

District court and appellate court lacked subject matter jurisdiction to consider the driver’s petition for judicial review, because the driver’s petition was premature and the record did not demonstrate that the hearing officer expressed his intention of sustaining the license suspension prior to the driver’s filing of the petition for judicial review. *Johnson v. State (In re Johnson)*, 153 Idaho 246, 280 P.3d 749 (Ct. App. 2012).

Senior surface water rights holders failed to preserve their right to appeal the district court’s failure to order the director of the Idaho department of water resources to issue a single, final water rights order, because they did

not raise any complaints regarding the content of the final order within the time for appeal. *A&B Irrigation Dist. v. Spackman (In re A&B Irrigation Dist.)*, 155 Idaho 640, 315 P.3d 828 (2013).

Tolling of Requirement.

Time for filing a petition for review of county commissioner's landfill site selection was tolled because the minutes of meeting where final site selection was made never used the word "final", the landowners never knew the decision was final, and the statement that the commissioners would like comments concerning the decisions within 30 days led landowners to believe that they had 30 days in which to object, rather than twenty-eight days, and because commissioners failed to publish the decision as required by § 39-7408(2)(d), and landowners were still attempting to exhaust their administrative remedies following the meeting. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

Cited *Arthur v. Shoshone County*, 133 Idaho 854, 993 P.2d 617 (Ct. App. 2000); *Am. Lung Ass'n v. State*, 142 Idaho 544, 130 P.3d 1082 (2006); *Knox v. State (In re Agency's Finding of Fact)*, 162 Idaho 729, 404 P.3d 1280 (Ct. App. 2017); *State v. Glodowski*, — Idaho —, 457 P.3d 917 (Ct. App. 2019).

§ 67-5274. Stay. — The filing of the petition for review does not itself stay the effectiveness or enforcement of the agency action. The agency may grant, or the reviewing court may order, a stay upon appropriate terms.

History.

I.C., § 67-5274, as added by 1992, ch. 263, § 46, p. 783.

§ 67-5275. Agency record for judicial review. — (1) Within forty-two (42) days after the service of the petition, or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the agency record. The agency record shall consist of:

- (a) the record compiled under [section 67-5225, Idaho Code](#), when the agency action was a rule;
- (b) the record compiled under [section 67-5249, Idaho Code](#), when the agency action was an order; or
- (c) any agency documents expressing the agency action when the agency action was neither an order nor a rule.

(2) By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs.

(3) The court may require corrections to the record.

History.

[I.C., § 67-5275](#), as added by 1992, ch. 263, § 47, p. 783.

CASE NOTES

Supplementary Record.

In action concerning open meetings law and review of an agency action brought pursuant to the Administrative Procedures Act (APA) concerning site selection of a landfill, the district court erred in allowing county commissioners to supplement its record with findings of fact regarding compliance with local land use plan, where the parties did not make any allegations that there was a procedural irregularity. [Petersen v. Franklin County, 130 Idaho 176, 938 P.2d 1214 \(1997\)](#).

§ 67-5276. Additional evidence. — (1) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material, relates to the validity of the agency action, and that:

(a) there were good reasons for failure to present it in the proceeding before the agency, the court may remand the matter to the agency with directions that the agency receive additional evidence and conduct additional factfinding.

(b) there were alleged irregularities in procedure before the agency, the court may take proof on the matter.

(2) The agency may modify its action by reason of the additional evidence and shall file any modifications, new findings, or decisions with the reviewing court.

History.

I.C., § 67-5276, as added by 1992, ch. 263, § 48, p. 783.

CASE NOTES

Public record.

Timeliness.

When permitted.

Public Record.

In appeal of city council's decision to deny development application, district court erred in ordering augmentation of record over the objection of the city. That the evidence added was a matter of public record was irrelevant, as it was not part of the agency record below. *Crown Point Dev. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007).

Timeliness.

In appeal of city council's decision to deny development application, district court erred in ordering augmentation of record over the objection of

the city, where developer's request for augmentation was only made at the hearing and, thus, was untimely. *Crown Point Dev. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007).

Landowner's motion to augment the record was properly denied, where the landowner not only failed to make the request until after the hearing, it was not made until after the decision on the petition. *Spencer v. Kootenai County*, 145 Idaho 448, 180 P.3d 487 (2008).

When Permitted.

In action concerning open meetings law and review of an agency action brought pursuant to the Administrative Procedures Act concerning site selection of a landfill, the district court erred in allowing county commissioners to supplement its record with findings of fact regarding compliance with local land use plan, where the parties did not make any allegations that there was a procedural irregularity. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

In a property owners' appeal of a county commissioners' denial of their application to rezone real property, the trial court did not err in denying the owners' request to present a letter written to them, which presented allegations of a conflict of interest by the chair of the planning and zoning commission, as additional evidence on appeal under this section, given the ambiguity of the letter. There was no showing that a discussion of the chair's wife with or in the presence of the county commissioners concerned the facts of the rezoning request. *Brower v. Bingham County Commissioners (In re Zoning Change)*, 140 Idaho 512, 96 P.3d 613 (2004).

Judicial review of a county board of commissioners' decision is generally confined to the board record, unless the party requesting the additional evidence can demonstrate that the evidence falls within the statutory exceptions provided for in this section. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

Where parties appealing an agency decision presented no evidence in support of their motion to augment the record that would support a finding that there were irregularities in procedure before the agency, no additional evidence should have been allowed. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

Cited County Residents Against Pollution from Septage Sludge v. Bonner County, 138 Idaho 585, 67 P.3d 64 (2003); Euclid Ave. Trust v. City of Boise, 146 Idaho 306, 193 P.3d 853 (2008).

§ 67-5277. Judicial review of issues of fact. — Judicial review shall be conducted by the court without a jury. Unless otherwise provided by statute, judicial review of disputed issues of fact must be confined to the agency record for judicial review as defined in this chapter, supplemented by additional evidence taken pursuant to section 67-5276, Idaho Code.

History.

I.C., § 67-5277, as added by 1992, ch. 263, § 49, p. 783.

CASE NOTES

Public record.

Supplement not permitted.

Public Record.

In appeal of city council's decision to deny development application, district court erred in ordering augmentation of record over the objection of the city. That the evidence added was a matter of public record was irrelevant, as it was not part of the agency record below. *Crown Point Dev. v. City of Sun Valley*, 144 Idaho 72, 156 P.3d 573 (2007).

Supplement Not Permitted.

In action concerning open meetings law and review of an agency action brought pursuant to the Administrative Procedures Act concerning site selection of a landfill, the district court erred in allowing county commissioners to supplement its record with findings of fact regarding compliance with local land use plan, where the parties did not make any allegations that there was a procedural irregularity. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

Cited *Jefferson County v. Eastern Idaho Regional Medical Ctr.*, 126 Idaho 392, 883 P.2d 1084 (Ct. App. 1994); *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 517, 915 P.2d 1375 (Ct. App. 1996); *Eacret v. Bonner County*, 139 Idaho 780, 86 P.3d 494 (2004); *Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.*, 143 Idaho 862, 154 P.3d 433

(2007); *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007); *Idaho Power Co. v. Idaho Dep't of Water Res. (In re Licensed Water Right No. 03-7018)*, 151 Idaho 266, 255 P.3d 1152 (2011).

§ 67-5278. Declaratory judgment on validity or applicability of rules.

— (1) The validity or applicability of a rule may be determined in an action for declaratory judgment in the district court, if it is alleged that the rule, or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the petitioner.

(2) The agency shall be made a party to the action.

(3) A declaratory judgment may be rendered whether or not the petitioner has requested the agency to pass upon the validity or applicability of the rule in question.

History.

1965, ch. 273, § 7, p. 701; am. and redesign. 1992, ch. 263, § 50, p. 783.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5207 and was amended and redesignated as § 67-5278 by § 50 of S.L. 1992, ch. 263, effective July 1, 1993.

CASE NOTES

Authority of county board.

Compliance with § 39-418.

Exhaustion of remedies.

Jurisdiction.

Parties.

Right to challenge rules.

Authority of County Board.

Although §§ 67-5203 (now § 67-5221), 67-5203A (now § 67-5229), 67-5206 (now § 67-5230), 67-5207 (now this section) and 67-5208 (now § 67-

5232) give the board of commissioners the authority to interpret statutes under its rulemaking provisions, these sections did not cover the board of commissioner's actions in concluding the county was not responsible to pay any further amounts to owners of residential care facility for their care of indigents, as there is no procedural mechanism in either the indigency statutes or the Administrative Procedures Act which permits the board of commissioners to issue a declaratory ruling on a legal issue; by submitting only the legal question, the parties were requesting an advisory opinion from the board of commissioners on matters which were largely factual. *Shobe v. Board of Comm'rs*, 126 Idaho 654, 889 P.2d 88 (1995).

Compliance with § 39-418.

The remedies of this section are not available after a final determination of a local health board, unless the provisions of § 39-418 are strictly complied with; § 39-418 dictates the exclusive procedure for appeal or review of a final board decision unless the procedure fails to provide an adequate remedy. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

Exhaustion of Remedies.

Trial court correctly determined, under subsections (1) and (3), that mining companies did not have to exhaust their administrative remedies prior to seeking judicial review of the total maximum daily load (TMDL) issued by the Idaho department of environmental quality; the companies sought a declaratory judgment regarding the validity of the TMDL as a rule, and two of the companies permits had already been modified as a result of the TMDL. *Asarco Inc. v. State*, 138 Idaho 719, 69 P.3d 139 (2003).

Jurisdiction.

Where no final determination of the district board of health was involved, the board did not raise the question of whether the action for declaratory relief was timely filed before the district court, the parties essentially agreed upon the facts, evidence was adduced in the district court for determination of one disputed factual issue, and neither party had challenged any of the court's findings; the district court had jurisdiction under § 39-417 to engage in the review authorized by this section. *Lindstrom v. District Bd. of Health*, 109 Idaho 956, 712 P.2d 657 (Ct. App. 1985).

Parties.

Canal companies could not seek action for declaratory judgment of administrative rules concerning conjunctive management of ground and surface water rights for the entire state adopted by Idaho department of water resources (IDWR) in Snake River Basin Adjudication (SRBA) since IDWR must be a party to the action and IDWR cannot be a party to **SRBA**. **Twin Falls Canal Co. v. Idaho Dep't of Water Resources**, 127 Idaho 688, 905 P.2d 89 (1995).

Right to Challenge Rules.

While an applicant has no proprietary “right” to a license before it is duly issued, it will not be gainsaid that she has a “right” to consideration of her application under valid legal standards; this right was sufficient to confer standing to challenge a rule. **Rawson v. Idaho State Bd. of Cosmetology**, 107 Idaho 1037, 695 P.2d 422 (Ct. App. 1985), overruled on other grounds, **Golay v. Loomis**, 118 Idaho 387, 797 P.2d 95 (1990).

Cited **Idaho Falls Consol. Hosps. v. Board of County Comm'rs**, 104 Idaho 628, 661 P.2d 1227 (1983); **Am. Falls Reservoir Dist. No. 2 v. Idaho Dep't of Water Res.**, 143 Idaho 862, 154 P.3d 433 (2007); **Haight v. Idaho DOT**, 163 Idaho 383, 414 P.3d 205 (2018).

§ 67-5279. Scope of review — Type of relief. — (1) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.

(2) When the agency was not required by the provisions of this chapter or by other provisions of law to base its action exclusively on a record, the court shall affirm the agency action unless the court finds that the action was:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure; or
- (d) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

History.

I.C., § 67-5279, as added by 1992, ch. 263, § 51, p. 783.

CASE NOTES

Abuse of discretion.

Agency.

Agency exceeded its authority.

Analysis.

Appeals.

Arbitrary and capricious.

Authority of court.

Burden of proof.

Conditional rezone.

Due process.

Final order.

Land use planning.

License suspension.

Modification of agency determination.

Preliminary plats.

Procedure.

Remand unnecessary.

Standard of review.

Substantial evidence.

Violation of substantial right.

Weight of evidence.

Abuse of Discretion.

Denial of a third party medical indigency application was set aside as an abuse of discretion, because the county failed to carry out its investigative

duties by conducting only a minimal investigation and failing to issue a subpoena to the patient; the investigative duties were not alleviated simply because the patient refused to cooperate. *University of Utah Hosp. v. Ada County Bd. of Comm'rs*, 143 Idaho 808, 153 P.3d 1154 (2007).

Idaho board of professional counselor and marriage and family therapists acted without substantial evidence in concluding that therapist violated two provisions of the ethics code, where it departed from its hearing officer's determination that the therapist's testimony as to her subjective intent was more credible than that submitted by the board's witness, but never explained its reasons for doing so. *Ater v. Idaho Bureau of Occupational Licenses*, 144 Idaho 281, 160 P.3d 438 (2007), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

City unreasonably interpreted its ordinances when it determined that the applicant failed to submit the necessary application for consideration of its request to construct a private road; the city automatically assumed that the applicant's request was another attempt to build a subdivision, and the city's interpretation of the code was unreasonable and, thus, an abuse of discretion. *Lane Ranch P'ship v. City of Sun Valley*, 145 Idaho 87, 175 P.3d 776 (2007).

Agency.

A board of county commissioners is not a state agency for purposes of application of this chapter. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Agency Exceeded Its Authority.

Agency had no authority to issue a permit for the construction of a duplex on a steep hillside; the conditional use permit application in this case did not include an engineer's report to ensure that an avalanche attenuation device would meet city ordinance standards. The city wholly ignored the provision of its avalanche zone district ordinance requiring the certification by an Idaho licensed engineer. *Fischer v. City of Ketchum*, 141 Idaho 349, 109 P.3d 1091 (2005).

Analysis.

The review of a zoning board decision under this section is a two tiered process: the party attacking the zoning board's action must illustrate that the

zoning board erred in a manner specified under subsection (3) of this section, and that a substantial right of that party was prejudiced. *Angstman v. City of Boise*, 128 Idaho 575, 917 P.2d 409 (Ct. App. 1996).

Local land use ordinance is not a “statutory provision” enacted by the legislature, the violation of which provides grounds for reversal under paragraph (3)(a). *Evans v. Bd. of Comm’rs*, 137 Idaho 428, 50 P.3d 443 (2002).

Appeals.

In an appeal from the district court’s decision where the district court was acting in its appellate capacity in a review under this chapter, the court of appeals reviews the agency record independently of the district court’s decision. *Woodfield v. Board of Professional Discipline*, 127 Idaho 738, 905 P.2d 1047 (Ct. App. 1995).

The appeal was dismissed because the time for appealing had passed where the preliminary plat approval of the subdivision was a final, appealable order and no appeal was taken from that order. *Stevenson v. Blaine County*, 134 Idaho 756, 9 P.3d 1222 (2000).

The Idaho department of transportation exceeded its statutory authority by prohibiting nonresidents from applying for restricted driving privileges pursuant to § 18-8002A(9). *Druffel v. State*, 136 Idaho 853, 41 P.3d 739 (2002).

Summary dismissal of the residents’ complaint by the board of county commissioners was improper, where the residents’ notice of appeal stated on its face lawful grounds for an appeal and the dismissal deprived the residents of their right to a public hearing at which additional information could be presented; the dismissal clearly prejudiced the residents’ substantial rights. *County Residents Against Pollution from Septage Sludge v. Bonner County*, 138 Idaho 585, 67 P.3d 64 (2003).

Board of commissioners did not violate the county’s comprehensive plan when it granted a zone change from A-2.5 to R-1, or when it approved an application for a planned unit development (PUD); based on the county’s subdivision ordinance and the board’s unique position in interpreting and applying its own zoning laws, the PUD did not violate the density

requirements of the county's zoning laws. [Evans v. Teton County](#), 139 Idaho 71, 73 P.3d 84 (2003).

Arbitrary and Capricious.

Decision of department of health and welfare was not arbitrary and capricious and was upheld where department denied medicaid coverage for otoplasty for an eight year old child asserting that the procedure was cosmetic and not medically necessary, where the child's hearing was normal and where his mother stated that the purpose of the otoplasty surgery was for psychological reasons. [Viveros v. State Dep't of Health & Welfare](#), 126 Idaho 714, 889 P.2d 1104 (1995).

Decision by a board of county commissioners granting property owners a variance for the construction of a boathouse was properly vacated and remanded by the court; board member's ex parte contacts and prehearing comments violated neighbors' due process rights. Board member's comments not only created an appearance of impropriety but also underscored the likelihood that the board member could not fairly decide the issues in the case. [Eacret v. Bonner County](#), 139 Idaho 780, 86 P.3d 494 (2004), overruled on other grounds, [City of Osburn v. Randel](#), 152 Idaho 906, 277 P.3d 353 (2012).

There was a reasonable basis for concluding that a verdict in a prior litigation determined the littoral boundaries of the properties at issue, collaterally estopping the landowner from relitigating the issue of littoral rights under § 58-1302(f) of the Idaho Lake Protection Act. The Idaho department of lands adequately weighed the evidence, measuring the impact of an amended encroachment permit against the possible damage to landowner's property, and there was nothing improper in the conclusion that the encroachment benefits outweighed the adverse effects on the landowner. The department's findings, conclusion, and decision were sufficiently detailed to demonstrate that it considered the applicable standards and reached a reasoned decision, the decision was not arbitrary and capricious and was based on substantial evidence in the record, pursuant to the court's review under this section. [Brett v. Eleventh St. Dockowner's Ass'n](#), 141 Idaho 517, 112 P.3d 805 (2005).

Determination by the director of the Idaho department of agriculture that there was no economically viable alternatives to crop burning was not

arbitrary, capricious or an abuse of discretion, where petitioners had not pointed to anything in the record showing that the financial rate of return for the non-thermal disposal of crop residue would be the same as that for crop burning. [Am. Lung Ass'n v. State, 142 Idaho 544, 130 P.3d 1082 \(2006\)](#).

Approval of a subdivision application was arbitrary and capricious, because approval was not contingent on judicial resolution of access over the applicants' easement, as required by Clearwater County, Idaho, Subdivision Ordinance (Ordinance) art. IV, § D.1; it was instead recommended that burdened estate owners seek such resolution, when the applicants had the burden to show each requirement under the Ordinance, including access to the proposed subdivision, was satisfied. [Shinn v. Bd. of County \(In re Variance ZV2011-2\), 156 Idaho 491, 328 P.3d 471 \(2014\)](#).

District court properly affirmed the Idaho transportation department's lifetime disqualification of a driver's commercial driving privileges, because the disqualification was neither arbitrary nor capricious, and it did not exceed the department's statutory authority. [Edwards v. Idaho Transp. Dep't, — Idaho —, 448 P.3d 1020 \(2019\)](#).

Authority of Court.

Because of the decision that there was no statutory authority under this section for the district court to enter a money judgment against county on hospital's indigency benefits claim, hospital could not assert a right to pre- or postjudgment interest, nor was it entitled to attorney fees under § 12-117. [University of Utah Hosp. v. Board of Comm'rs, 128 Idaho 517, 915 P.2d 1375 \(Ct. App. 1996\)](#).

Actions seeking civil damages or declaratory relief could not be combined with petitions for judicial review; trust's actions were treated as a civil action only, based upon the filing fee category used in bringing the actions. [Euclid Ave. Trust v. City of Boise, 146 Idaho 306, 193 P.3d 853 \(2008\)](#).

Most of the issues raised in this action were decided in an earlier decision approving a conditional use permit, which was a final decision from which no appeal was taken. [Johnson v. Blaine County, 146 Idaho 916, 204 P.3d 1127 \(2009\)](#).

District court and appellate court lacked subject matter jurisdiction to consider the driver's petition for judicial review, because the driver's petition was premature and the record did not demonstrate that the hearing officer expressed his intention of sustaining the license suspension prior to the driver's filing of the petition for judicial review. *Johnson v. State (In re Johnson)*, 153 Idaho 246, 280 P.3d 749 (Ct. App. 2012).

Burden of Proof.

The party attacking a zoning board's action under this section must first illustrate that the zoning board erred in a manner specified therein and must then show that a substantial right of the party has been prejudiced. *Payette River Property Owners Ass'n v. Board of Comm'rs*, 132 Idaho 551, 976 P.2d 477 (1999), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

It is the burden of the party contesting an agency's decision to show how the agency erred in a manner specified under this section and to establish that a substantial right has been prejudiced. *Wheeler v. Idaho Dep't of Health & Welfare*, 147 Idaho 257, 207 P.3d 988 (2009).

Conditional Rezone.

Plaintiffs' argued that the board of county commissioner's approval of a conditional rezoning frustrated the purposes listed under § 67-6502 (f) and (g); however plaintiffs did not provide support to show how the rezoning discouraged urban and urban-type development within incorporated cities, or how it failed to promote the avoidance of undue concentration of population and overcrowding of land, and, thus, failed to show how the board erred under the terms of this section. *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

Due Process.

Upholding a city council's denial of an application for a special use permit to erect a television transmission tower despite the planning and zoning commission's prior approval, the appellate court held that the council retained the right to review decisions of the commission de novo, and since it was not acting in a quasi-judicial capacity when doing so, due process was not required. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 159 P.3d 840 (2007).

Driver failed to demonstrate that he suffered any prejudice due to the hearing officer's denial of driver's request for an in-person hearing, because the driver did not indicate what additional questions he would have asked the officer or what evidence he may have produced had he been able to ask the arresting officer questions regarding the video at an in-person hearing. [State v. Beyer \(In re Beyer\), 155 Idaho 40, 304 P.3d 1206 \(Ct. App. 2013\).](#)

Final Order.

The appeal was dismissed because the order of the city approving the subdivision plat application was not a final order, but was an interlocutory order; as an interlocutory order, the city's approval order was not directly appealable or subject to review except as part of a timely-filed appeal from the county board of commissioners' final decision on the subdivision plat. [Blaha v. Eagle City Council, 134 Idaho 768, 9 P.3d 1234 \(2000\).](#)

Land Use Planning.

While a single hearing examiner could conduct a land use planning hearing if authorized by local ordinance, where the applicable ordinance specifically called for a five-member appeal board, the county employed unlawful procedure. However, although the initial hearing was held upon unlawful procedure, the landowner's substantial rights had not been prejudiced thereby. [Spencer v. Kootenai County, 145 Idaho 448, 180 P.3d 487 \(2008\).](#)

License Suspension.

License suspension was vacated because an vehicle operator's breath test was not conducted in accordance with the statutory requirements of § 18-8004(4). The method approved by Idaho state police and used for the operator's test (the 2013 standard operating procedures) was not adopted in compliance with the Idaho administrative procedure act, § 67-5201 et seq. Therefore, the operator successfully demonstrated that one of the grounds enumerated in § 18-8002A(7) for vacating the suspension was met. [Hern v. Idaho Transp. Dep't, 159 Idaho 671, 365 P.3d 427 \(Ct. App. 2015\).](#)

Modification of Agency Determination.

Because the legislature amended the Idaho Administrative Procedures Act in 1992, removing the language allowing modification of an agency decision, the district court correctly determined that it lacked statutory

authority under this section to enter a money judgment against the county on hospital's claim for reimbursement for indigent's treatment; hospital could have sought other possible remedies through the contempt powers of the district court. [University of Utah Hosp. v. Board of Comm'rs](#), 128 Idaho 517, 915 P.2d 1375 (Ct. App. 1996).

Preliminary Plats.

Even if preliminary plat in instant case was approved prior to annexation, such conditional preliminary approval was not a final decision and did not amount to extraterritorial jurisdiction beyond the city limits. [Castaneda v. Brighton Corp.](#), 130 Idaho 923, 950 P.2d 1262 (1998).

Where preliminary plat approval and the issuance of permits places a developer in a position to take immediate steps to permanently alter the land before final approval, the decision is final for purposes of challenging the authorized action that permits the material alteration and can be reviewed on appeal. [Stevenson v. Blaine County](#), 134 Idaho 756, 9 P.3d 1222 (2000).

Procedure.

Zoning board's actions did not constitute unlawful procedure by failing to require strict compliance with the rules of evidence. The board held two hearings and took comments from the parties. While the board did not strictly comply with the rules of evidence, the evidence was presented in a format in which the credibility of the witnesses and the evidence could be assessed firsthand. [Evans v. Bd. of Comm'rs](#), 137 Idaho 428, 50 P.3d 443 (2002).

Trial court properly dismissed a suit brought by a neighbor claiming that the issuance of a livestock confinement operation (LCO) permit without notice or a public hearing was flawed where, according to the county's zoning ordinance, a sub-threshold livestock confinement operation (LCO) permit could be approved by the county zoning administrator and neither the applicable provisions of the Local Land Use Planning Act (LLUPA), § 67-6501 et seq., nor the zoning ordinance required a notice and hearing before the commission for sub-threshold LCO permits. [Chisholm v. Twin Falls County \(In re Twin Falls County Comm'rs Resolution No. 2001-4\)](#), 139 Idaho 131, 75 P.3d 185 (2003).

Remand Unnecessary.

Where the county commission's denial of medical indigency benefits was set aside, and where there was no evidence on the record that further findings of fact could be made from the paucity of evidence that would affect the outcome of the case, remand by the district court was not necessary. *Bonner Gen. Hosp. v. Bonner County*, 133 Idaho 7, 981 P.2d 242 (1999).

Petition for judicial review of a decision of a county board of commissioners, denying an application of medical indigency benefits on the ground that the applicant was not a resident of the county because she was an undocumented alien, was remanded to the board, because the board failed to make findings on critical factors of eligibility, including indigency and medical necessity. *Mercy Med. Ctr. v. Ada County*, 146 Idaho 226, 192 P.3d 1050 (2008).

Standard of Review.

Even if the defendant council erred in that a zoning decision violated constitutional or statutory provisions, exceeded the council's authority, was made upon unlawful procedure, was not supported by substantial evidence on the record, or was arbitrary, capricious, or an abuse of discretion, the appellate court would affirm its action unless a substantial right of the plaintiff had been prejudiced. *Lamar Corp. v. City of Twin Falls*, 133 Idaho 36, 981 P.2d 1146 (1999).

A party appealing a county board of commissioners' decision must first show that the board erred in a manner specified in subsection (3), and then it must show that a substantial right has been prejudiced. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009); *Laughy v. Idaho DOT*, 149 Idaho 867, 243 P.3d 1055 (2010).

When analyzing a county board of commissioners' decision, to determine if it was supported by substantial evidence pursuant to paragraph (3)(d), an appellate court will not substitute its judgment for that of the board regarding the weight of the evidence on questions of fact. The county board of commissioners' factual determinations are binding on the reviewing court, even where there is conflicting evidence, so long as the

determinations are supported by substantial and competent evidence. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

The decisions of the state board of accountancy (“board”) are afforded a strong presumption of validity; therefore, the court deferred to the board’s application of conflict of interest rules as reasonable. *Duncan v. State Bd. of Accountancy*, 149 Idaho 1, 232 P.3d 322 (2010).

When conflicting evidence is presented, an agency’s findings must be sustained on appeal, as long as they are supported by substantial and competent evidence. *North Snake Ground Water Dist. v. Idaho Dep’t of Water Res. (In re Permit No. 36-16979)*, 160 Idaho 518, 376 P.3d 722 (2016).

Substantial Evidence.

Where other than an advertisement in a local newspaper and a general survey sent to psychologists on current rates, health care provider presented no other documentation of its efforts to seek the services of a qualified consultant at a medicaid allowable rate, there was substantial, competent evidence to support the hearing officer’s finding that health care provider did not make sufficient effort to meet the Medicaid requirements. *Boise Group Homes, Inc. v. State Dep’t of Health & Welfare*, 123 Idaho 908, 854 P.2d 251 (1993).

Hearing officer’s decision, that claimant did not prove the necessary elements of equitable or quasi estoppel to prevent the Idaho department of health and welfare (IDHW) from collecting an overpayment, attributable to IDHW error, of Aid to Families with Dependent Children welfare benefits to grandmother of orphaned children, was supported by substantial evidence and, therefore, affirmed. *Willig v. State, Dep’t of Health & Welfare*, 127 Idaho 259, 899 P.2d 969 (1995).

Supreme court’s review of zoning decision was limited to a determination whether the zoning authority’s findings and conclusions were supported by substantial, competent evidence. *Howard v. Canyon County Bd. of Comm’rs*, 128 Idaho 479, 915 P.2d 709 (1996).

Where city staff introduced photographs and sketches showing the proposed location of a billboard with a representation of the billboard superimposed on the view, where a city council member specifically

challenged the petitioner's representative about his competing visual representation, suggesting it was drawn to look smaller than reality, where objections were raised by neighbors, and where the council's decision to deny the permit to erect the billboard was made after hearings and council discussion, it was the result of reasoned judgment, and was not arbitrary or capricious. [Lamar Corp. v. City of Twin Falls](#), 133 Idaho 36, 981 P.2d 1146 (1999).

Because the board of professional discipline did not make findings that reconciled the patient's account with the testimony of other witnesses concerning the events of the day on which the sexual encounter allegedly took place, the record did not contain substantial evidence to support the finding that the patient had a sexual encounter with the psychiatrist as required by subsection (3)(d). [Cooper v. Board of Prof'l Discipline of Idaho State Bd. of Med.](#), 134 Idaho 449, 4 P.3d 561 (2000).

Action of the governing board denying a subdivision application and preliminary plat was vacated; although the governing board specified its reasons for denying a subdivision application and preliminary plat, and for requiring that the application be accompanied by a proposal for central water and sewer, its finding of fact, that the proposed subdivision was in an area of increasing residential development close to a city where it was projected that development of central sewer system and water lines would be extended in the reasonably near future, was not supported by substantial evidence, where neither written nor oral evidence was presented on the issue. [Sanders Orchard v. Gem County](#), 137 Idaho 695, 52 P.3d 840 (2002).

In an administrative matter seeking the revocation of a physician's license to practice medicine, there was substantial, competent evidence supporting the board's conclusion that the doctor failed to provide proper medical care to two patients; therefore, the board's decision could not be reversed on appeal. [Laurino v. Bd. of Prof'l Discipline](#), 137 Idaho 596, 51 P.3d 410 (2002).

Idaho board of medicine had the authority to appoint a hearing officer to oversee disciplinary proceedings, and the hearing officer's findings of fact and conclusions of law adopted by the board were amply supported by the evidence and were not clearly erroneous, arbitrary, or capricious. [Suits v. Idaho Bd. of Prof'l Discipline](#), 138 Idaho 397, 64 P.3d 323 (2003).

There was substantial and competent evidence to support the county's conclusion that the decedent was not an Idaho resident because (1) he did not intend to remain in Idaho as he listed a Montana address on his employment application in Montana and he left blank the space for his permanent address on his application, which he could have used to list an Idaho residence if he intended to remain an Idaho resident; and (2) the decedent's daughter testified that he did not intend to return to Idaho; therefore, as the decedent was not an Idaho resident, pursuant to § 31-3502, substantial evidence in the record supported the county's decision denying the medical center's request for medical assistance to pay for the medical services the decedent received at the medical center. *E. Idaho Regl Med. Ctr. v. Ada County Bd. of Comm'rs (In re Hamlet)*, 139 Idaho 882, 88 P.3d 701 (2004).

County board of commissioners (board) was entrusted with the authority to act in the "best interests" of the citizens of Gooding County and its decision evaluated the corporation's Project in terms of the criteria listed in Gooding County, Idaho, Ordinance Article X, Section C and its action reflected its concern about the harm that could potentially be caused by the Project, especially with respect to the Project's odors. There was substantial evidence in the record indicating that odor problems were a major concern for the mediation panel, the planning and zoning commission (P&Z) and the board, such that although conflicting evidence was before the board about the likelihood and severity of odors, substantial evidence in the record supported the board's decision to avoid the risk of odors and other problems that could be caused by the Project, such that the board did not abuse its discretion by overruling the P&Z's decision. *Davisco Foods Int'l, Inc. v. Gooding County*, 141 Idaho 784, 118 P.3d 116 (2005).

Conditional-encroachment permit was properly granted by the Idaho transportation department because substantial evidence existed that the plan called for a sufficient stopping sight distance, and building the encroachment near the ditch-rider approach would generate exceptionally low volumes of traffic. *Vickers v. Lowe*, 150 Idaho 439, 247 P.3d 666 (2011).

An agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the

determinations are supported by substantial and competent evidence in the record. [Wilkinson v. State, 151 Idaho 784, 264 P.3d 680 \(Ct. App. 2011\)](#).

Violation of Substantial Right.

City's interpretation of its ordinances violated a substantial right of the applicant to have its application for a private road evaluated properly under the municipal code, impeding the applicant's ability to access the property, and preventing the applicant from developing the property for admittedly permissible uses under the applicable zoning. [Lane Ranch P'ship v. City of Sun Valley, 145 Idaho 87, 175 P.3d 776 \(2007\)](#).

When appellants sought an application to develop a subdivision in an area zoned rural that contained a wetland subject to flooding, the county board of commissioners' visit to the site of the proposed subdivision was conducted in violation of Idaho's open meeting laws [§ 74-201 et seq.], but appellants were not entitled to reversal of the board's decision denying their application, because appellants' substantial rights were not prejudiced as required by this section, [Noble v. Kootenai County, 148 Idaho 937, 231 P.3d 1034 \(2010\)](#).

When a developer purchased land to create five hundred residential units, the county board of commissioners denied its two applications for approval of the proposed development; the district court affirmed, finding that the developer's substantial rights were not violated. On review, the developer claimed that the board's denial was arbitrary or capricious, the developer's right to due process was violated, and the board's actions were barred by principles of equitable estoppel, res judicata, and claim preclusion. Because the developer did not challenge the board's finding that his substantial rights were violated under subsection (4) of this section, the supreme court did not need to review the remaining issues. [Kirk-Hughes Dev., LLC v. Kootenai County Bd. of County Comm'rs, 149 Idaho 555, 237 P.3d 652 \(2010\)](#).

Where city passed an ordinance prohibiting recreational vehicles from being located in manufactured home parks and grandfathered in existing manufactured home parks and then denied the park owner a permit to replace an existing recreational vehicle with a new recreational vehicle in the park, the city's actions violated the park owner's due process right to continue a nonconforming use and prejudiced a substantial right of his. [Eddins v. City of Lewiston, 150 Idaho 30, 244 P.3d 174 \(2010\)](#).

Claimant failed to sufficiently allege how her substantial rights were prejudiced by the granting of a use permit, where she only briefly addressed any prejudice to a substantial right, by alleging in a conclusory manner that her property rights had been prejudiced by the grant of the permit because of “noise, commercial traffic and a disproportionately large building in the residential area.” However, she did not provide any applicable authority to support the allegation that the complaints constituted prejudice to a substantial right. *Krempasky v. Nez Perce County Planning & Zoning (In re Approval of a Conditional Use Permit #CUP-2008-3)*, 150 Idaho 231, 245 P.3d 983 (2010).

Board did not violate the landowner’s substantial rights by substantively misapplying its ordinances in granting variances to the neighboring landowners because it was not enough that the landowner might be able to show that misapplication, where the board’s decision granting the neighboring landowners’ application for a variance did not prejudice the landowner’s substantial rights. *Hawkins v. Bonneville County Bd. of Comm’rs*, 151 Idaho 228, 254 P.3d 1224 (2011).

Allowing neighboring landowners to construct new homes by granting their applications for variances did not change the number of structures on the land, and to demolish unattended houses and replace them with new homes built to modern safety codes would reduce the chance of fire that could spread to the complaining landowner’s property. Granting the variances did not prejudice a substantial right. *Hawkins v. Bonneville County Bd. of Comm’rs*, 151 Idaho 228, 254 P.3d 1224 (2011).

Plain text of § 41-1042 permits a bail bond company to contemporaneously write a bail bond and contract with a client to indemnify the company for the cost of apprehending a defendant who jumps bail. *Idaho Admin. Code R. 18.01.04.016.02*, which forbids such contracts, contravenes the statute and prejudices the company’s substantial right to contract freely, contrary to this section. *Two Jinn, Inc. v. Idaho Dep’t of Ins.*, 154 Idaho 1, 293 P.3d 150 (2013).

The Idaho transportation department has standing to appeal the denial of an administrative license suspension without alleging, or providing evidence of, prejudice to one of its substantial rights. *State v. Kalani-Keegan*, 155 Idaho 297, 311 P.3d 309 (Ct. App. 2013).

Idaho department of water resources' (IDWR) review of documents outside of the agency record and the addition of volume limitation language to its decision did not substantially prejudice a water rights holder, because (1) IDWR would have reached the same result without the documents, and (2) the volume limitation language was consistent with the original final decree of the water rights. *Sylte v. Idaho Dep't of Water Res.*, — Idaho —, 443 P.3d 252 (2019).

Weight of Evidence.

Court will not substitute its judgment for that of the agency in questions of fact involving the weight of particular evidence. *Woodfield v. Board of Professional Discipline*, 127 Idaho 738, 905 P.2d 1047 (Ct. App. 1995).

Cited *Jefferson County v. Eastern Idaho Regional Medical Ctr.*, 126 Idaho 392, 883 P.2d 1084 (Ct. App. 1994); *University of Utah Hosp. v. Board of Comm'rs*, 128 Idaho 517, 915 P.2d 1375 (Ct. App. 1996); *Skyview-Hazedel, Inc. v. Idaho Dep't of Health & Welfare*, 128 Idaho 756, 918 P.2d 1201 (1996); *Northern Frontiers, Inc. v. State ex rel. Cade*, 129 Idaho 437, 926 P.2d 213 (Ct. App. 1996); *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 958 P.2d 583 (1998); *Sprenger, Grubb & Assocs. v. City of Hailey*, 133 Idaho 320, 986 P.2d 343 (1999); *Levin v. State Bd. of Med.*, 133 Idaho 413, 987 P.2d 1028 (1999); *Arthur v. Shoshone County*, 133 Idaho 854, 993 P.2d 617 (Ct. App. 2000); *St. Joseph Reg'l Med. Ctr. v. Nez Perce County Comm'rs*, 134 Idaho 486, 5 P.3d 466 (2000); *Dupont v. Idaho State Bd. of Land Comm'rs*, 134 Idaho 618, 7 P.3d 1095 (2000); *Blaha v. Board of Ada County Comm'rs*, 134 Idaho 770, 9 P.3d 1236 (2000); *Barron v. Idaho Dep't of Water Resources*, 135 Idaho 414, 18 P.3d 219 (2001); *Staff of State Real Estate Comm'n v. Nordling*, 135 Idaho 630, 22 P.3d 105 (2001); *Sacred Heart Med. Ctr. v. Kootenai County Comm'rs*, 136 Idaho 787, 41 P.3d 215 (2001); *Pearl v. Bd. of Prof'l Discipline of Idaho State Bd. of Med.*, 137 Idaho 107, 44 P.3d 1162 (2002); *Friends of Farm to Mkt. v. Valley County*, 137 Idaho 192, 46 P.3d 9 (2002); *Whitted v. Canyon County Bd. of Comm'rs*, 137 Idaho 118, 44 P.3d 1173 (2002); *Hayden Lake Fire Prot. Dist. v. Alcorn*, 141 Idaho 388, 111 P.3d 73 (2005); *Chisholm v. State Dep't of Water Res. (In re Transfer No. 5639)*, 142 Idaho 159, 125 P.3d 515 (2005); *Haw v. State Bd. of Med.*, 143 Idaho 51, 137 P.3d 438 (2006); *Lane Ranch P'ship v. City of Sun Valley*, 144 Idaho 584, 166 P.3d 374 (2007); *Neighbors for a Healthy Gold Fork v.*

Valley County, 145 Idaho 121, 176 P.3d 126 (2007); Archer v. Dep't of Transp. (In re Archer), 145 Idaho 617, 181 P.3d 543 (Ct. App. 2008); Bennett v. State, 147 Idaho 141, 206 P.3d 505 (Ct. App. 2009); Taylor v. Canyon County Bd. of Comm'rs, 147 Idaho 424, 210 P.3d 532 (2009); Wheeler v. Idaho Transp. Dep't, 148 Idaho 378, 223 P.3d 761 (Ct. App. 2009); Gardiner v. Boundary County Bd. of Comm'rs, 148 Idaho 764, 229 P.3d 369 (2010); St. Luke's Magic Valley Reg'l Med. Ctr., Ltd v. Bd. of County Comm'rs, 149 Idaho 584, 237 P.3d 1210 (2010); McDaniel v. State (In re Driver's License Suspension of McDaniel), 149 Idaho 643, 239 P.3d 36 (Ct. App. 2010); Burton v. State, 149 Idaho 746, 240 P.3d 933 (Ct. App. 2010); Idaho Power Co. v. Idaho Dep't of Water Res. (In re Licensed Water Right No. 03-7018), 151 Idaho 266, 255 P.3d 1152 (2011); Bell v. Idaho Transp. Dep't (In re Bell), 151 Idaho 659, 262 P.3d 1030 (Ct. App. 2011); Maclay v. Idaho Real Estate Comm'n, 154 Idaho 540, 300 P.3d 616 (2012); Elias-Cruz v. Idaho DOT, 153 Idaho 200, 280 P.3d 703 (2012); Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012); A&B Irrigation Dist. v. Spackman (In re A&B Irrigation Dist.), 155 Idaho 640, 315 P.3d 828 (2013); Peck v. Dep't of Transp., 156 Idaho 112, 320 P.3d 1271 (Ct. App. 2014); Wernecke v. State, 158 Idaho 654, 350 P.3d 1031 (Ct. App. 2015); St. Alphonsus Reg'l Med. Ctr. v. Gooding County, 159 Idaho 84, 356 P.3d 377 (2015); Rangen, Inc. v. Idaho Dep't of Water Res. (In re Distrib. of Water to Water Right Nos. 36-02551 & 36-07694 (Rangen, Inc.) IDWR Docket CM-DC-2011-004), 159 Idaho 798, 367 P.3d 193 (2016); Mena v. Idaho State Bd. of Med., 160 Idaho 56, 368 P.3d 999 (2016); Hawkins v. Idaho Transp. Dep't, 161 Idaho 173, 384 P.3d 420 (Ct. App. 2016); Hauser Lake Rod & Gun Club, Inc. v. City of Hauser, 162 Idaho 260, 396 P.3d 689 (2017); City of Blackfoot v. Spackman, 162 Idaho 302, 396 P.3d 1184 (2017); Herrmann v. State (In re Herrmann), 162 Idaho 682, 403 P.3d 318 (Ct. App. 2017); Knox v. State (In re Agency's Finding of Fact), 162 Idaho 729, 404 P.3d 1280 (Ct. App. 2017); Erickson v. The Idaho Bd. of Licensure of Prof'l Engineers & Prof'l Land Surveyors, — Idaho —, 450 P.3d 292 (2019).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421

(2015).

§ 67-5280 — 67-5290. [Reserved.]

§ 67-5291. Legislative review of rules. — (1) The standing committees of the legislature may review temporary, pending and final rules which have been published in the bulletin or in the administrative code. If reviewed, the standing committee which reviewed the rules shall report to the membership of the body its findings and recommendations concerning its review of the rules. If ordered by the presiding officer, the report of the committee shall be printed in the journal. A concurrent resolution may be adopted approving the rule, in whole or in part, or rejecting the rule where it is determined that the rule, or part of the rule, is not consistent with the legislative intent of the statute that the rule was written to interpret, prescribe, implement or enforce, or where it is determined that any rule, or part of a rule, previously promulgated and reviewed by the legislature shall be deemed not to be consistent with the legislative intent of the statute the rule was written to interpret, prescribe, implement or enforce. The rejection of a rule, or part of a rule, by the legislature via concurrent resolution shall prevent the agency's intended action from remaining in effect beyond the date of the legislative action. It shall be the responsibility of the secretary of state to immediately notify the affected agency of the filing and effective date of any concurrent resolution enacted to approve or reject, in whole or in part, an agency rule and to transmit a copy of the concurrent resolution to the director of the agency for promulgation. The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of a new rule. If a rule, or part of a rule, has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin. Except as provided in section 67-5226, Idaho Code, with respect to temporary rules, every rule promulgated within the authority conferred by law, and in accordance with the provisions of chapter 52, title 67, Idaho Code, and made effective pursuant to section 67-5224(5), Idaho Code, shall remain in full force and

effect until the same is rejected by concurrent resolution, or until it expires as provided in section 67-5292, Idaho Code, or by its own terms.

(2) For purposes of this section, “part of a rule” means a provision in a rule that is designated either numerically or alphabetically or the entirety of any new or amended language contained therein.

History.

1969, ch. 48, § 2, p. 125; am. 1976, ch. 185, § 2, p. 671; am. 1979, ch. 104, § 1, p. 250; am. 1979, ch. 112, § 1, p. 356; am. 1981, ch. 243, § 1, p. 486; am. 1985, ch. 13, § 2, p. 18; am. 1990, ch. 22, § 1, p. 33; am. and redesisg. 1992, ch. 263, § 53, p. 783; am. 1995, ch. 196, § 3, p. 686; am. 1996, ch. 161, § 12, p. 529; am. 2014, ch. 191, § 3, p. 515; am. 2017, ch. 3, § 2, p. 4.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 191, deleted “amending or modifying” following “rejecting” in the fourth sentence; deleted “amendment or modification” following “rejection” in the fifth sentence; deleted “amend or modify” following “approve” in the sixth sentence; deleted “or the incorporation of any legislative amendments to a new rule. If a rule has been amended or modified by the legislature, the agency shall republish the rule in accordance with the provisions of chapter 52, title 67, Idaho Code, reflecting the action taken by the legislature and the effective date thereof” at the end of the seventh sentence; and deleted “amended or modified” following “rejected” in the last sentence.

The 2017 amendment, by ch. 3, designated the existing provision as subsection (1); added subsection (2); and in subsection (1), rewrote the fourth sentence, which formerly read: “A concurrent resolution may be adopted approving the rule or rejecting the rule where it is determined that the rule violates the legislative intent of the statute under which the rule was made, or where it is determined that any rule previously promulgated and reviewed by the legislature shall be deemed to violate the legislative intent of the statute under which the rule was made”, inserted “or part of a rule”

near the beginning of the fifth and eighth sentences, and inserted “in whole or in part” near the middle of the sixth sentence.

Legislative Intent.

Section 1 of S.L. 2017, ch. 3 provided: “Legislative Intent. It is the intent of the Legislature to clarify its authority to approve or reject rules, in whole or in part, as prescribed in [Section 29, Article III, of the Constitution](#) of the State of Idaho. The power of the Legislature to approve or reject a part of a rule applies only to the entirety of a provision, such as a subsection or subparagraph, or to any new or amended language contained in such a provision. The Legislature does not have the authority to reject certain and select words or phrases that would alter the meaning or purpose of the entire rule.”

Compiler’s Notes.

This section was formerly compiled as § 67-5218 and was amended and redesignated as § 67-5291 by § 53 of S.L. 1992, ch. 263, effective July 1, 1993.

Effective Dates.

Section 3 of S.L. 2017, ch. 3 declared an emergency. Approved February 13, 2017.

CASE NOTES

[Authority of agency.](#)

[Concurrent resolution.](#)

[Constitutionality.](#)

[Legislative approval advisory.](#)

[Purpose.](#)

[Rejection of rules.](#)

Authority of Agency.

An agency must be acting within the grant of its authority for this section to apply; accordingly, where the public utilities commission was found to be without specific statutory authority to promulgate intervenor funding

rules allowing costs and attorney fees in proceedings under the Public Utility Regulatory Policies Act, 16 U.S.C.S. § 2601, the failure of the legislature to object to the promulgation was an irrelevant consideration in determining the validity of the rules. *Idaho Power Co. v. Idaho Pub. Utils. Comm'n*, 102 Idaho 744, 639 P.2d 442 (1981).

Concurrent Resolution.

The use of a concurrent resolution, as provided for in this section, does not bestow any greater dignity, power or authority on a concurrent resolution other than that provided in this section for rejecting a rule or regulation. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Where, conspicuously absent from a concurrent resolution rejecting and declaring null and void, and of no force and effect, administrative rules and regulations regarding Individual/Subsurface Sewage Disposal Systems, was any statement that the regulations were violative of legislative intent, said resolution did not satisfy the requirements of this section and was a nullity. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Constitutionality.

Both the Administrative Procedure Act and this section were created in the constitutionally mandated manner. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

The condition enunciated in this section is that the rules which the legislature has delegated the authority to promulgate comply with the legislative intent of the enabling statute, and this conditioned grant of authority is consistent with the principle of separation of powers as set forth in Idaho Const., Art. II, § 1, as these acts relate to the executive department. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

This section was created in the constitutionally mandated manner and is substantively proper under the terms of Idaho Const., Art. II, § 1, in that it does not permit the exercise of power by the legislature in rejecting rules or regulations properly belonging to the executive or the judiciary. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

This section, as to rescinding rules and regulations pursuant thereto, is constitutional; however, this is not to suggest that all such legislative statutory reservations or rejections of rules or regulations pursuant thereto

are necessarily consistent with the separation of powers principles. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

Legislative Approval Advisory.

Any legislative approval of a rule has merely a nonbinding advisory effect upon the supreme court in its resolution of legal issues; to permit the legislature to decide what administrative rules do or do not conflict with statutory law would constitute an abrogation of the judicial power in violation of Idaho Const., Art II, § 1 and Idaho Const., Art. V, §§ 2 and 13. *Holly Care Center v. State, Dep't of Emp.*, 110 Idaho 76, 714 P.2d 45 (1986).

Purpose.

The legislature has attempted to give to itself the power both to review administrative rules and to approve, modify, or to veto them as the case may be. *Holly Care Center v. State, Dep't of Emp.*, 110 Idaho 76, 714 P.2d 45 (1986).

Rejection of Rules.

This section makes clear that the legislature has reserved unto itself the power to reject an administrative rule or regulation as part of the statutory process and this reservation is not an intrusion on the judiciary's constitutional powers. *Mead v. Arnell*, 117 Idaho 660, 791 P.2d 410 (1990).

OPINIONS OF ATTORNEY GENERAL

Nutrient Management Plan.

A nutrient management plan developed by the Idaho department of health and welfare pursuant to § 39-105 is subject to legislative review pursuant to §§ 67-5223 and this section and further, the limitation on authority granted to the department and the broad authority granted the board supports the conclusion that the plan is subject to review by the board. OAG 94-2.

RESEARCH REFERENCES

Idaho Law Review. — Idaho Administrative Law: A Primer for Students and Practitioners, Richard Henry Seamon. 51 Idaho L. Rev. 421

(2015).

§ 67-5292. Expiration of administrative rules. — (1) Notwithstanding any other provision of this chapter to the contrary, every rule adopted and becoming effective after June 30, 1990, shall automatically expire on July 1 of the following year unless the rule is extended by statute. Extended rules shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each such succeeding year.

(2) All rules adopted prior to June 30, 1990, shall expire on July 1, 1991, unless extended by statute. Thereafter, any rules which are extended shall then continue to expire annually on July 1 of each succeeding year unless extended by statute in each succeeding year.

(3) This section is a critical and integral part of this chapter. If any portion of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall be deemed to affect all rules adopted subsequent to the effective date of this act and such rules shall be deemed null, void and of no further force and effect.

History.

I.C., § 67-5219, as added by 1990, ch. 22, § 2, p. 33; am. and redesign. 1992, ch. 263, § 54, p. 783; am. 1996, ch. 161, § 13, p. 529; am. 2014, ch. 191, § 4, p. 515.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 191, deleted former subsection (3), which read: “Rules adopted and becoming effective pursuant to this chapter may be extended in whole or in part. When any part of an existing rule is amended, then that entire rule shall be subject to the provisions of this section” and redesignated former subsection (4) as present subsection (3).

Compiler’s Notes.

This section was formerly compiled as § 67-5219 and was amended and redesignated as § 67-5292 by § 54 of S.L. 1992, ch. 263, effective July 1, 1993.

The phrase “the effective date of this act” in subsection (3) refers to the effective date of S.L. 1990, Chapter 22, which was effective July 1, 1990.

Effective Dates.

S.L. 1990, ch. 22, became law effective February 22, 1990, without the governor’s signature.

Section 14 of S.L. 1996, ch. 161 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval, and retroactive to January 1, 1996. Approved March 12, 1996.

Chapter 53

PERSONNEL SYSTEM

Sec.

67-5301. Establishment of division of human resources and declaration of policy.

67-5302. Definitions.

67-5303. Application to state employees.

67-5303A. Compensation of exempt employees. [Repealed.]

67-5304. Existing merit systems and personnel systems.

67-5305. Employees hired prior to enactment of this act.

67-5306. Applicability of federal merit system standards.

67-5307. Organization of commission.

67-5308. Authority and duties of the division of human resources —
Selection of administrator.

67-5309. Rules of the division of human resources and the personnel
commission.

67-5309A. State employee compensation philosophy.

67-5309B. Idaho compensation plan.

67-5309C. Annual surveys, reports and recommendations.

67-5309D. Other pay delivery options.

67-5310. Service to other political subdivisions.

67-5311. Limitation of political activity.

67-5312. Violations.

67-5313. Veterans' preference.

67-5314. Method of financing.

67-5315. Establishment and adoption of employee problem solving and due process procedures.

67-5316. Appeal procedure.

67-5317. Petition for review procedure.

67-5318. Appeal to district court.

67-5319 — 67-5327. [Repealed.]

67-5328. Hours of work and overtime.

67-5329 — 67-5731. [Amended and Redesignated.]

67-5332. Credited state service — Applicability — Computation.

67-5333. Sick leave.

67-5333A. Sick leave transferred — Public education entity and state educational agency.

67-5333B. Sick leave transferred — Former employees of Seland college of applied technology at Boise state university — State employment.

67-5334. Vacation time.

67-5335. [Amended and Redesignated.]

67-5336. Paid holidays — Exemption from holiday work. [Repealed.]

67-5337. Moving expense reimbursement.

67-5338. Red cross disaster services.

67-5339. Loan repayment program.

67-5340. Leave of absence with pay in lieu of workmen's compensation benefits.

67-5341. Retiree medical insurance coverage — Legislative intent — Account created — Voluntary employee participation — Salary withholding — Administration of program. [Repealed.]

67-5342. Severance pay for state employees.

67-5342A. Severance pay — Purchase of membership service prohibited.

67-5343. Leave of absence for bone marrow or organ donation.

§ 67-5301. Establishment of division of human resources and declaration of policy. — There is hereby established the division of human resources in the office of the governor, which is authorized and directed to administer a personnel system, including the provision of personal and professional training, for classified Idaho employees. The purpose of said personnel system is to provide a means whereby classified employees of the state of Idaho shall be examined, selected, retained and promoted on the basis of merit and their performance of duties, thus effecting economy and efficiency in the administration of state government. The legislature declares that, in its considered judgment, the public good and the general welfare of the citizens of this state require enactment of this measure, under the powers of the state.

History.

1965, ch. 289, § 1, p. 746; am. 1974, ch. 34, § 4, p. 988; am. 1977, ch. 307, § 2, p. 856; am. 1994, ch. 272, § 1, p. 836; am. 1999, ch. 370, § 1, p. 976.

STATUTORY NOTES

Cross References.

Workmen's compensation law applies to state officers and employees, § 72-205.

CASE NOTES

Cited *Service Employees Int'l Local 6 v. Idaho Dep't of Health & Welfare*, 106 Idaho 756, 683 P.2d 404 (1984); *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1985); *Pounds v. Denison*, 115 Idaho 381, 766 P.2d 1262 (Ct. App. 1988); *Lockhart v. Department of Fish & Game*, 121 Idaho 894, 828 P.2d 1299 (1992); *Stacey v. Idaho Dep't of Labor*, 134 Idaho 727, 9 P.3d 530 (2000).

§ 67-5302. Definitions. — As used in this chapter, and other applicable sections of the Idaho Code, each of the terms defined in this section shall have the meaning given in this section unless a different meaning is clearly required by the context. Such terms and their definitions are:

(1) “Administrative employee” means any person, nonclassified or classified, appointed to a position that meets the criteria set forth in the federal fair labor standards act, [29 U.S.C. 201 et seq.](#) Final designation of a classified position as “administrative” within this definition shall be made by the administrator of the division of human resources. Exceptions to this designation that do not violate the federal fair labor standards act, [29 U.S.C. 201 et seq.](#), may be made by the administrator.

(2) “Administrator” means the administrator of the division of human resources in the governor’s office.

(3) “Appointing authority” means the officer, board, commission, person or group of persons authorized by statute or lawfully delegated authority to make appointments to or employ personnel in any department.

(4) “Class” means a group of positions sufficiently similar as to the duties performed, degree of supervision exercised or required, minimum requirements of training, experience or skill, and other characteristics that the same title, the same tests of fitness and the same schedule of compensation may be applied to each position in the group.

(5) “Classified officer or employee” means any person appointed to or holding a position in any department of the state of Idaho, which position is subject to the provisions of the merit examination, selection, retention, promotion and dismissal requirements of chapter 53, title 67, Idaho Code.

(6) “Commission” means the Idaho personnel commission.

(7) “Compensatory time” means approved time off from duty provided in compensation for overtime hours worked.

(8) “Computer worker” means any person, nonclassified or classified, appointed to a position that meets the criteria set forth in the federal fair labor standards act, [29 U.S.C. 201 et seq.](#) Final designation of a classified

position as “computer worker” within this definition shall be made by the administrator of the division of human resources. Exceptions to this designation that do not violate the federal fair labor standards act, [29 U.S.C. 201 et seq.](#), may be made by the administrator.

(9) “Department” means any department, agency, institution or office of the state of Idaho.

(10) “Disabled veteran” is as defined in [section 65-502, Idaho Code](#).

(11) “Eligible” means a person who has been determined to be qualified for a classified position and whose name has been placed on the register of eligibles.

(12) “Executive employee” means any person, nonclassified or classified, appointed to a position equivalent to a bureau chief or above as provided in [section 67-2402, Idaho Code](#), or any employee meeting the following criteria:

(a) An individual whose primary duty is management of a department, division or bureau; and

(b) Who customarily and regularly directs the work of at least two (2) or more other employees therein; and

(c) Who has the authority to hire and fire, or to recommend hiring and firing; or whose recommendation on these and other actions affecting employees is given particular weight; and

(d) Who customarily and regularly exercises discretionary powers; and

(e) Who is classified to a position allocated to the pay grade equivalent to two hundred sixty (260) points or higher pursuant to the rating system established by rule.

(f) Final designation of a classified position as “executive” in this definition shall be made by the administrator. Exceptions to this designation that do not violate the federal fair labor standards act, [29 U.S.C. 201 et seq.](#), may be made by the administrator.

(13) “Exempt employee” means any employee, classified or nonclassified, who is determined to be an executive, professional or administrative employee as defined herein, or who qualifies for any other

exemption from cash compensation for overtime under applicable federal law. Final designation of a classified position as exempt shall be made by the administrator.

(14) “Full-time employee” means any employee working a forty (40) hour workweek.

(15) “Holiday” means the following:

January 1 (New Year’s Day);

Third Monday in January (Martin Luther King, Jr.-Idaho Human Rights Day);

Third Monday in February (Washington’s Birthday);

Last Monday in May (Memorial Day);

July 4 (Independence Day);

First Monday in September (Labor Day);

Second Monday in October (Columbus Day);

November 11 (Veterans Day);

Fourth Thursday in November (Thanksgiving);

December 25 (Christmas).

In addition, the term “holiday” shall mean any day so designated by the president of the United States or the governor of this state for a public fast, thanksgiving or holiday.

In the event that a holiday occurs on a Saturday, the preceding Friday shall be a holiday, and if the holiday falls on a Sunday, the following Monday shall be a holiday.

A holiday is a day of exemption from work granted to nonexecutive employees during which said employees shall be compensated as if they actually worked. Employees classified as executive exempt are entitled to ten (10) paid holidays per year. If such an employee works on one (1) of the official holidays listed in this subsection, then such employee may take an alternative day off but shall not receive additional compensation.

(16) “Hours worked” means those hours actually spent in the performance of the employee’s job on any day including holidays and shall not include vacation or sick leave or other approved leave of absence.

(17) “Nonclassified employee” means any person appointed to or holding a position in any department of the state of Idaho, which position is exempted from the provisions of chapter 53, title 67, Idaho Code, as provided for in [section 67-5303, Idaho Code](#).

(18) “Normal workweek” means any forty (40) hours worked during a particular one hundred sixty-eight (168) hour period as previously established by the employee’s appointing authority.

(19) “Open competitive examination” means an examination that may be taken by qualified applicants to compete on an equal basis for listing on the register of eligibles.

(20) “Overtime work” means time worked on holidays and time worked in excess of forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours, except that in the case of those employees engaged in law enforcement, correctional and fire protection activities characterized by irregular shift work schedules, time worked in excess of one hundred sixty (160) hours in a period of twenty-eight (28) consecutive days shall constitute overtime work within the meaning of this chapter. Such employees may also be paid overtime for specific hours worked in addition to their normal schedules upon emergency declaration by the governor or with the approval of the appointing authority and the board of examiners.

(21) “Participating department” means any department of the state of Idaho that employs persons in classified positions subject to the merit examination, selection, retention, promotion and dismissal requirements of this chapter.

(22) “Part-time employee” means any employee whose usually scheduled work is fewer than forty (40) hours in a period of one hundred sixty-eight (168) consecutive hours, and who shall not be entitled to sick leave accruals provided in [section 67-5333, Idaho Code](#), vacation leave provided in [section 67-5334, Idaho Code](#), nor holiday pay as defined in subsection (15) of this section, unless contributions are being made to the public employee

retirement system in accordance with chapter 13, title 59, Idaho Code, and rules promulgated by the public employee retirement system board.

(23) “Personnel system” means the procedure for administering employees in accordance with this chapter.

(24) “Political office” means a public office for which partisan politics is a basis for nomination, election or appointment.

(25) “Political organization” means a party that sponsors candidates for election to political office.

(26) “Position” means a group of duties and responsibilities legally assigned or delegated by one (1) or more appointing authorities and requiring the employment of one (1) person.

(27) “Professional employee” means any person, nonclassified or classified, appointed to a position that meets the criteria set forth in the federal fair labor standards act, [29 U.S.C. 201 et seq.](#) Final designation of a classified position as “professional” within this definition shall be made by the administrator. Exceptions to this designation that do not violate the federal fair labor standards act, [29 U.S.C. 201 et seq.](#), may be made by the administrator.

(28) “Provisional appointment” means appointment to a classified position pending the establishment of a register for such position, and employment shall not be continued in this status longer than thirty (30) days after establishment of a register.

(29) “Public education entity” means community colleges, public school districts, public charter schools and the Idaho digital learning academy.

(30) “Qualifying examination” means an examination or evaluation given to a selected person to determine eligibility for reclassification or appointment to a position in a classification.

(31) “Register” means a list of names of persons who have been determined to be eligible for employment in a classified position as determined on the basis of examination and merit factors as established by the administrator.

(32) “Seasonal appointment” means an appointment to a position that is permanent in nature but that has intermittent work periods throughout the

year.

(33) “Service rating” means a recorded evaluation of work performance and promotional potential of an employee by his supervisor.

(34) “State educational agency” means the following state agencies and educational institutions supervised by the Idaho state board of education:

- (a) Boise state university;
- (b) Idaho state university;
- (c) University of Idaho;
- (d) Lewis-Clark state college;
- (e) Idaho public television;
- (f) The division of vocational rehabilitation;
- (g) The division of career technical education;
- (h) The office of the state board of education; and
- (i) The department of education.

(35) “Temporary appointment” means appointment to a position that is not permanent in nature and in which employment will not exceed one thousand three hundred eighty-five (1,385) hours during any twelve (12) month period. No person holding a temporary appointment may work in excess of one thousand three hundred eighty-five (1,385) hours during a twelve (12) month period of time for any one (1) department, except upon petition by the appointing authority of the department of lands that demonstrates good cause, the administrator of the division of human resources may extend the one thousand three hundred eighty-five (1,385) hour limit for employees of the department who are required to perform fire suppression activities.

(36) “Vacation leave” means a period of exemption from work granted to employees during which time said employees shall be compensated. The term shall not include compensatory time for overtime work.

(37) “Veteran” is as defined in [section 65-203, Idaho Code](#).

History.

1965, ch. 289, § 2, p. 746; am. 1975, ch. 164, § 1, p. 434; am. 1977, ch. 307, § 3, p. 856; am. 1979, ch. 197, § 1, p. 568; am. 1981, ch. 133, § 1, p. 221; am. 1986, ch. 133, § 1, p. 341; am. 1990, ch. 371, § 1, p. 1019; am. 1993, ch. 75, § 1, p. 198; am. 1993, ch. 233, § 1, p. 811; am. 1999, ch. 243, § 1, p. 616; am. 1999, ch. 370, § 2, p. 976; am. 2000, ch. 121, § 1, p. 262; am. 2002, ch. 146, § 2, p. 419; am. 2006, ch. 51, § 16, p. 145; am. 2006, ch. 380, § 7, p. 1175; am. 2008, ch. 138, § 1, p. 396; am. 2008, ch. 196, § 2, p. 619; am. 2016, ch. 199, § 1, p. 556; am. 2018, ch. 17, § 6, p. 22; am. 2020, ch. 44, § 4, p. 98.

STATUTORY NOTES

Cross References.

Administrator of division of human resources, § 67-5308.

Department of lands, § 58-101 et seq.

Idaho digital learning academy, § 33-5501 et seq.

Idaho personnel commission, § 67-5307.

Public employee retirement system board, § 59-1304.

State board of examiners, § 67-2001 et seq.

Amendments.

This section was amended by two 1993 acts which appear to be compatible and have been compiled together.

The 1993 amendment, by ch. 75, § 1, at the end of present subdivision (31) added the language beginning with “, except upon petition by” and ending with “to perform fire suppression activities”.

The 1993 amendment, by ch. 233, § 1, added present subdivision (8); redesignated former subdivisions (8) through (31) as present subdivisions (9) through (32), respectively; in present subdivision (13) substituted “(Veterans Day)” for “(Veteran’s Day)” following “November 11”; in present subdivision (25)4. substituted “in” for “by” following “the rating system established”; and added subdivision (33).

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 243, § 1, in subdivision (14) substituted “mean” for “means”; inserted “on any day including holidays” and deleted “holidays” preceding “vacation or sick leave.”

The 1999 amendment, by ch. 370, § 2, in subdivision (1)5., substituted “administrator of the division of human resources” for “Idaho personnel commission”; added present subsection (2); redesignated former subsections (2) through (33) as present subsections (3) through (34); in present subdivision (11)6., (12), (26)5. and (29), substituted “administrator” for “Idaho personnel commission”; in present subsection (15), substituted “means” for “mean”; in present subsection (17), deleted “and” preceding “sixty-eight”; in present subsection (28), inserted “or evaluation” preceding “given to a selected”; in present subsection (32), substituted “administrator of the division of human resources” for “director of the personnel commission.”

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 51, rewrote subsection (9) which formerly read: “Disabled veteran’ means an individual who has served on military duty in the armed forces of the United States during any period of war recognized by the United States department of veterans affairs for the purposes of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11), or during any other conflict recognized by the award of a campaign or service medal of the United States; and has been separated therefrom under honorable conditions; and has established the present existence of a service-connected disability; and is receiving compensation, disability retirement benefits, or pension under a public statute as administered by the department of veterans affairs or a military department”; and rewrote subsection (35) which formerly read: “Veteran’ means any person who has served in the active service of the armed forces of the United States during any period of war recognized by the United States department of veterans affairs for the purpose of awarding federal veterans benefits as may be defined in title 38, U.S. code, chapter 1, section 101(11), or during any other conflict recognized by the award of a campaign or service medal of the United States, and who has been discharged under other than dishonorable conditions.”

The 2006 amendment, by ch. 380, substituted “rule” or “by rule” for “[section 67-5309C, Idaho Code](#)” in subsections (1)(d), (12)(e), and 27(d); substituted “bureau” for “section” in (12)(a); and in the last paragraph of subsection (15), inserted “nonexecutive” and added the last sentence.

The section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 138, added the last sentence in subsection (20).

The 2008 amendment, by ch. 196, rewrote subsections (1) and (27) to the extent that a detailed comparison is impracticable; added present subsection (8) and redesignated former subsections (8) and (9) as present subsections (9) and (10); deleted former subsection (10), which was the definition for “Earned administrative leave”; added the last sentence in paragraph (12)(f); and in subsection (22), added the language beginning “and who shall not be entitled to sick leave accruals provided in [section 67-5333, Idaho Code](#).”

The 2016 amendment, by ch. 199, added subsections (29) and (34) and redesignated the other subsections accordingly.

The 2018 amendment, by ch. 17, in subsection (34), deleted former paragraph (e), which read: “Eastern Idaho technical college” and redesignated former paragraphs (f) to (j) as present paragraphs (e) to (i).

The 2020 amendment, by ch. 44, substituted “[section 65-203, Idaho Code](#)” for “[section 65-502, Idaho Code](#)” at the end of subsection (37).

Federal References.

The term “professional employee” is defined for federal labor law in [29 U.S.C.S. § 152](#).

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 2008, ch. 138 declared an emergency. Approved March 17, 2008.

CASE NOTES

Classified officers or employees.

Department.

Response to charges prior to removal.

Classified Officers or Employees.

All Idaho state employees, unless specifically exempted, are “classified” employees and, as such, they are subject to the requirements and entitled to the protections of the Idaho Personnel System Act; an employee’s statutory rights are implicitly included in his or her contract of employment. *Brigham v. Department of Health & Welfare*, 106 Idaho 347, 679 P.2d 147 (1984).

The position of director of maintenance at a state hospital was classified; it was not exempted under § 67-5303, and it fitted within the definition of “classified” set forth in this section; that the position was for a probationary period had no effect on its classified status. *Brigham v. Department of Health & Welfare*, 106 Idaho 347, 679 P.2d 147 (1984).

Department.

The Lewis-Clark State College, as a state institution under the state board of education, is a department within the meaning of this section; therefore, employees of LCSC are subject to the provisions of the act unless they are exempt. *Allen v. Lewis-Clark State College*, 105 Idaho 447, 670 P.2d 854 (1983) (see subsection (34)).

Response to Charges Prior to Removal.

Employees “exempt” under § 67-5303 do not enjoy the statutory protection that “classified employees” enjoy; therefore, such employees are not entitled to the opportunity to respond to charges against them prior to their removal. *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185, cert. denied, 479 U.S. 1007, 107 S. Ct. 645, 93 L. Ed. 2d 701 (1986).

Cited *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1985).

§ 67-5303. Application to state employees. — All departments of the state of Idaho and all employees in such departments, except those employees specifically defined as nonclassified, shall be classified employees, who are subject to this chapter and to the system of personnel administration which it prescribes. Nonclassified employees shall be:

(a) Members of the state legislature and all other officers of the state of Idaho elected by popular vote, and persons appointed to fill vacancies in elective offices, and employees of the state legislature.

(b) Members of statutory boards and commissions and heads of departments appointed by and serving at the pleasure of the governor, deputy directors appointed by the director and members of advisory boards and councils appointed by the departments.

(c) All employees and officers in the office, and at the residence, of the governor; and all employees and officers in the offices of the lieutenant governor, secretary of state, attorney general, state treasurer, state controller, and state superintendent of public instruction who are appointed on and after the effective date of this chapter.

(d) Except as otherwise provided by law, not more than one (1) declared position for each board or commission and/or head of a participating department, in addition to those declared to be nonclassified by other provisions of law.

(e) Part-time professional consultants who are paid on a fee basis for any form of legal, medical or other professional service, and who are not engaged in the performance of administrative duties for the state.

(f) Judges, temporary referees, receivers and jurors.

(g) All employees of the Idaho supreme court, Idaho court of appeals and district courts.

(h) All employees of the Idaho state bar.

(i) Assistant attorneys general attached to the office of the attorney general.

(j) Officers, members of the teaching staffs of state educational institutions, the professional staff of the Idaho department of education administered by the board of regents and the board of education, and the professional staffs of the Idaho division of career technical education and vocational rehabilitation administered by the state board for career technical education. "Teaching staff" includes teachers, coaches, resident directors, librarians and those principally engaged in academic research. The word "officer" means presidents, vice presidents, deans, directors, or employees in positions designated by the state board who receive an annual salary of not less than step "A" of the pay grade equivalent to three hundred fifty-five (355) Hay points in the state compensation schedule. A nonclassified employee who is designated as an "officer" on July 5, 1991, but does not meet the requirements of this subsection, may make a one (1) time irrevocable election to remain nonclassified. Such an election must be made not later than August 2, 1991. When such positions become vacant, these positions will be reviewed and designated as either classified or nonclassified in accordance with this subsection.

(k) Employees of the military division.

(l) Patients, inmates or students employed in a state institution.

(m) Persons employed in positions established under federal grants, which, by law, restrict employment eligibility to specific individuals or groups on the basis of nonmerit selection requirements. Such employees shall be termed "project exempt" and the tenure of their employment shall be limited to the length of the project grant, or twenty-four (24) months, or four thousand one hundred sixty (4,160) hours of credited state service, whichever is of the shortest duration. No person hired on a project-exempt appointment shall be employed in any position allocated to the classified service.

(n) Temporary employees.

(o) All employees and officers of the following named commodity commissions, and all employees and officers of any commodity commission created hereafter: the Idaho potato commission, as provided in chapter 12, title 22, Idaho Code; the Idaho honey commission, as provided in chapter 28, title 22, Idaho Code; the Idaho bean commission, as provided in chapter 29, title 22, Idaho Code; the Idaho hop grower's commission, as

provided in chapter 31, title 22, Idaho Code; the Idaho wheat commission, as provided in chapter 33, title 22, Idaho Code; the Idaho pea and lentil commission, as provided in chapter 35, title 22, Idaho Code; the Idaho apple commission, as provided in chapter 36, title 22, Idaho Code; the Idaho cherry commission, as provided in chapter 37, title 22, Idaho Code; the Idaho mint commission, as provided in chapter 38, title 22, Idaho Code; the Idaho sheep and goat health board, as provided in chapter 1, title 25, Idaho Code; the state brand inspector, and all district supervisors, as provided in chapter 11, title 25, Idaho Code; the Idaho beef council, as provided in chapter 29, title 25, Idaho Code; and the Idaho dairy products commission, as provided in chapter 31, title 25, Idaho Code.

(p) All inspectors of the fresh fruit and vegetable inspection service of the Idaho department of agriculture, except those positions involved in the management of the program.

(q) All employees of correctional industries within the department of correction.

(r) All deputy administrators and wardens employed by the department of correction. Deputy administrators are defined as only the deputy administrators working directly for the nonclassified division administrators under the director of the department of correction.

(s) All public information positions, with the exception of secretarial positions, in any department.

(t) Any division administrator.

(u) Any regional administrator or division administrator in the department of environmental quality.

(v) All employees of the division of financial management, all employees of the STEM action center, all employees of the office of species conservation, all employees of the office of drug policy and all employees of the office of energy resources [office of energy and mineral resources].

(w) All employees of the Idaho food quality assurance institute.

(x) The state appellate public defender, deputy state appellate public defenders and all other employees of the office of the state appellate public defender.

(y) All quality assurance specialists or medical investigators of the Idaho board of medicine.

(z) All pest survey and detection employees and their supervisors hired specifically to carry out activities under the Idaho plant pest act, chapter 20, title 22, Idaho Code, including but not limited to pest survey, detection and eradication, except those positions involved in the management of the program.

(aa) All medical directors employed by the department of health and welfare who are engaged in the practice of medicine, as defined by [section 54-1803, Idaho Code](#), at an institution named in [section 66-115, Idaho Code](#).

History.

1965, ch. 289, § 3, p. 746; am. 1969, ch. 171, § 1, p. 510; am. 1971, ch. 121, § 1, p. 405; am. 1972, ch. 389, § 1, p. 1121; am. 1973, ch. 175, § 1, p. 385; am. 1973, ch. 307, § 1, p. 667; am. 1975, ch. 164, § 2, p. 434; am. 1976, ch. 367, § 1, p. 1205; am. 1979, ch. 198, § 1, p. 573; am. 1981, ch. 133, § 2, p. 221; am. 1981, ch. 156, § 1, p. 267; am. 1983, ch. 5, § 1, p. 19, am. 1986, ch. 133, § 2, p. 341; am. 1986, ch. 204, § 1, p. 509; am. 1991, ch. 66, § 1, p. 180; am. 1991, ch. 216, § 1, p. 519; am. 1993, ch. 77, § 1, p. 204; am. 1994, ch. 180, § 219, p. 420; am. 1995, ch. 365, § 4, p. 1276; am. 1997, ch. 302, § 2, p. 894; am. 1998, ch. 221, § 1, p. 761; am. 1998, ch. 389, § 8, p. 1190; am. 1999, ch. 17, § 1, p. 24; am. 1999, ch. 329, § 27, p. 852; am. 2001, ch. 38, § 1, p. 71; am. 2001, ch. 103, § 101, p. 253; am. 2002, ch. 188, § 1, p. 541; am. 2002, ch. 192, § 1, p. 553; am. 2008, ch. 89, § 1, p. 247; am. 2011, ch. 30, § 1, p. 72; am. 2012, ch. 117, § 26, p. 321; am. 2015, ch. 124, § 9, p. 312; am. 2016, ch. 25, § 45, p. 35; am. 2016, ch. 33, § 1, p. 82; am. 2018, ch. 120, § 1, p. 256.

STATUTORY NOTES

Cross References.

Correctional industries, § 20-401 et seq.

Department of correction, § 20-201.

Department of education, § 33-126 et seq.

Department of environmental quality, § 39-104.

Division of financial management, § 67-1910.

Idaho compensation plan, § 67-5309B.

Idaho food quality assurance institute, § 67-8301 et seq.

Military division, as part of governor's office, § 67-802.

Office of drug policy, § 67-821.

Office of species conservation, § 67-818.

State board for career technical education, § 33-2202.

State board of education, § 33-101 et seq.

STEM action center, § 67-823.

Amendments.

This section was amended by two 1998 acts which appear to be compatible and have been compiled together.

The 1998 amendment, by ch. 221, § 1, in subdivision (c) substituted "lieutenant governor" for "lieutenant-governor" and in subdivision (k) deleted "not assigned to the bureau of disaster services" at the end.

The 1998 amendment, by ch. 389, § 8, in subdivision (c) substituted "lieutenant governor" for "lieutenant-governor" and added subdivision (x).

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 17, § 1, added subsection (y).

The 1999 amendment, by ch. 329, § 27, in subsection (j), in the first sentence, substituted "division of professional-technical education" for "department of vocational education," and substituted "professional-technical education" for "vocational education."

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 38, § 1, in subsection (o), substituted "inspector, and all district supervisors" for "board".

The 2001 amendment, by ch. 103, § 101, substituted “chapter” for “act” in the first undesignated paragraph and subsection (c); in subsection (u), substituted “division” for “assistant”; “department” for “division” and “quality” for “protection in the department of health and welfare”.

This section was amended by two 2002 acts — ch. 188, § 1, effective July 1, 2002, and ch. 192, § 1, effective March 21, 2002, which appear to be compatible and have been compiled together.

The 2002 amendment, by ch. 188, § 1, inserted “, Idaho court of appeals” in subdivision (g).

The 2002 amendment, by ch. 192, § 1, deleted “the division of” preceding “correctional industries” in subdivision (q) and rewrote subdivision (r), which read: “All wardens employed by the department of correction.”

The 2008 amendment, by ch. 89, deleted “the Idaho prune commission, as provided in chapter 30, title 22, Idaho Code” preceding “the Idaho hop grower’s commission” in subsection (o) and added subsection (2).

The 2011 amendment, by ch. 30, in the second sentence of subsection (r), deleted “six (6)” preceding “deputy administrators” and “two (2)” preceding “nonclassified division administrators.”

The 2012 amendment, by ch. 117, substituted “Idaho sheep and goat health board” for “state board of sheep commissioners” in subsection (o).

The 2015 amendment, by ch. 124, substituted “Idaho honey commission” for “Idaho honey advertising commission” near the beginning of paragraph (o).

This section was amended by two 2016 acts which appear to be compatible and have been compiled together.

The 2016 amendment, by ch. 25, substituted “career technical education” for “professional-technical education” twice in the first sentence in subsection (j).

The 2016 amendment, by ch. 33, added “all employees of the stem action center, all employees of the office of species conservation, all employees of the office of drug policy and all employees of the office of energy resources” at the end of subsection (v).

The 2018 amendment, by ch. 120, substituted “Idaho mint commission, as provided in chapter 38” for “Idaho mint grower’s commission, as provided in chapter 38” in subsection (o) and added subsection (aa).

Compiler’s Notes.

The phrase “the effective date of this chapter” near the end of subsection (c) refers to the effective date of S.L. 1969, Chapter 171, which was effective March 18, 1969.

For further information on the fresh fruit and vegetable inspection service of the department of agriculture, referred to in subsection (p), see <https://agri.idaho.gov/main/about/about-isda/ag-inspections/fresh-fruit-vegetable-inspection-service>.

The bracketed insertion at the end of subsection (v) was added by the compiler to correct the name of the referenced agency. See <https://oemr.idaho.gov>.

Effective Dates.

Section 2 of S.L. 1972, ch. 389 declared an emergency. Approved April 3, 1972.

Section 5 of S.L. 1976, ch. 367 provided that this section should be in full force and effect on and after July 1, 1977.

Section 2 of S.L. 1981, ch. 156 declared an emergency. Approved March 30, 1981.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 219 was effective January 2, 1995.

Section 7 of S.L. 1997, ch. 302 declared an emergency. Approved March 24, 1997.

Section 2 of S.L. 2002, ch. 192 declared an emergency. Approved March 21, 2002.

Section 10 of S.L. 2015, ch. 124 declared an emergency. Approved March 26, 2015.

CASE NOTES

College employees.

Directors.

Removal without hearing.

State employees.

State hospital maintenance director.

College Employees.

The Lewis-Clark State College, as a state institution under the state board of education, is a department within the meaning of § 67-5302; therefore, employees of LCSC are subject to the provisions of the act unless they are exempt. *Allen v. Lewis-Clark State College*, 105 Idaho 447, 670 P.2d 854 (1983) (see § 67-5302(34)).

Directors.

The term “director” in subdivision (i) (now (j)) of this section should be given its ordinary meaning, that being one who supervises, controls or manages. *Allen v. Lewis-Clark State College*, 105 Idaho 447, 670 P.2d 854 (1983).

Chief of campus security was not an employee meeting the criteria set forth in this section, since his annual salary was substantially below that required and there was no evidence that a bachelor’s degree or its equivalent was a requirement for his position. However, where chief of campus security supervised, controlled and managed the activities of the campus security forces, the fact that his title was that of “chief” rather than “director” did not affect his status under the civil service laws and he was an exempt employee as a “director” under subdivision (i) (now (j)) of this section. *Allen v. Lewis-Clark State College*, 105 Idaho 447, 670 P.2d 854 (1983).

Removal Without Hearing.

Employees “exempt” under this section do not enjoy the statutory protection that “classified employees” under § 67-5302 enjoy; therefore, such employees are not entitled to the opportunity to respond to charges against them prior to their removal. *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185, cert. denied, 479 U.S. 1007, 107 S. Ct. 645, 93 L. Ed. 2d 701 (1986).

State Employees.

All Idaho state employees, unless specifically exempted, are “classified” employees and as such they are subject to the requirements and entitled to the protections of the Idaho Personnel System Act; an employee’s statutory rights are implicitly included in his or her contract of employment. *Brigham v. Department of Health & Welfare*, 106 Idaho 347, 679 P.2d 147 (1984).

State Hospital Maintenance Director.

The position of director of maintenance at a state hospital was classified; it was not exempted under this section, and it fitted within the definition of “classified” set forth in § 67-5302; that the position was for a probationary period had no effect on its classified status. *Brigham v. Department of Health & Welfare*, 106 Idaho 347, 679 P.2d 147 (1984).

RESEARCH REFERENCES

Idaho Law Review. — Idaho vs FLSA: Department of Corrections Must Change to Comply with Federal Law, Comment. 52 Idaho L. Rev. 975 (2016).

§ 67-5303A. Compensation of exempt employees. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section which comprised 1975, ch. 164, § 14, p. 434 was repealed by S.L. 1977, ch. 307, § 15.

§ 67-5304. Existing merit systems and personnel systems. — The personnel system administered by the division of human resources created by this act is hereby designated as the “merit system,” “civil service system” or “personnel system” as may be required by any other section of the Idaho Code for the administration of any department covered by this act; and all laws in conflict in whole or in part with the provisions of this act are hereby repealed to the extent of such conflict or inconsistency, provided, however, that in the implementation of this act those portions of chapter 35, title 67, Idaho Code, requiring approval of the administrator of the division of financial management of increase in compensation for any state employee, shall not be held to apply to employees covered under this act, but all departments whose salaries and administrative costs come from state appropriations shall prepare and file the reports and estimates in the office of the administrator of the division of financial management in accordance with chapter 35, title 67, Idaho Code, and personnel compensation thereunder shall not be effective until approved as being within the state budget limitations of the respective department.

History.

1965, ch. 289, § 4, p. 746; am. 1986, ch. 134, § 1, p. 355; am. 1999, ch. 370, § 3, p. 1294.

STATUTORY NOTES

Cross References.

Division of financial management, § 69-1910.

Division of human resources, § 67-5301.

Compiler’s Notes.

The term “this act”, used throughout this section, refers to S.L. 1965, Chapter 289, which is codified as §§ 67-5301 to 67-5303, 67-5304 to 67-5309, and 67-5310 to 67-5314. The reference probably should be to “this chapter,” meaning chapter 53, title 67, Idaho Code.

§ 67-5305. Employees hired prior to enactment of this act. — (1) An employee who has had less than six (6) calendar months of service on the date his department commences participation in the personnel system shall be required to pass a suitable noncompetitive examination and satisfactorily complete a probationary period in order to be retained in a position.

(2) An employee who does not obtain a passing grade in the examination referred to in subsection (2) [(1)] of this section shall be separated from his position within thirty (30) days after the establishment of an adequate register of eligibles for such position.

History.

1965, ch. 289, § 5, p. 746; am. 1986, ch. 133, § 3, p. 341; am. 1999, ch. 370, § 4, p. 976.

STATUTORY NOTES

Compiler's Notes.

The term “this act”, used in the section heading, refers to S.L. 1965, Chapter 289, which is presently codified as §§ 67-5301 to 67-5303, 67-5304 to 67-5309, and 67-5310 to 67-5314. The reference probably should be to “this chapter,” meaning chapter 53, title 67, Idaho Code.

The bracketed numeral [(1)] in subsection (2) was inserted by the compiler to reflect the apparent intent of the 1999 amendment by S.L. 1999, ch. 370, § 4, p. 976.

CASE NOTES

Cited *Intermountain Gas Co. v. Idaho Pub. Utils. Comm’n*, 98 Idaho 718, 571 P.2d 1119 (1977).

§ 67-5306. Applicability of federal merit system standards. — Notwithstanding any other provision, wherever federal merit system standards are applicable to any department covered by this act, financed in whole or in part by federal funds, rules shall be established or modified by the administrator pursuant to chapter 52, title 67, Idaho Code, to the extent necessary to apply such standards to personnel administration in such grant-in-aid programs, and to the positions and employees therein.

History.

1965, ch. 289, § 6, p. 746; am. 1999, ch. 370, § 5, p. 976.

STATUTORY NOTES

Compiler's Notes.

The term “this act”, near the middle of this section, refers to S.L. 1965, Chapter 289, which is presently codified as §§ 67-5301 to 67-5303, 67-5304 to 67-5309, and 67-5310 to 67-5314. The reference probably should be to “this chapter,” meaning chapter 53, title 67, Idaho Code.

§ 67-5307. Organization of commission. — (1) The Idaho personnel commission is hereby created in the office of the governor and shall consist of five (5) members, not more than three (3) of which at any time may belong to the same political party. The members of the commission shall be appointed by the governor on the basis of experience in personnel management, business or governmental management and their known sympathy with merit principles for the impartial selection of efficient state government employees; provided, however, that at least two (2) of the members shall have had at least five (5) years of personnel management experience.

(2) Members of the commission shall be appointed for overlapping terms of six (6) years, except that in the first instance one (1) member shall be appointed for two (2) years, one (1) member for four (4) years and one (1) member for six (6) years. Initial members shall be appointed to take office within thirty (30) days after the effective date of this chapter. The members of the personnel commission serving on the effective date of this chapter shall continue in office subject to the provisions of this chapter. The additional members of the commission shall be appointed one (1) for four (4) years and one (1) for six (6) years, the term of each to be designated by the governor. Their successors shall be appointed for terms of six (6) years. If, for any reason, a member should leave the commission before his term expires, the governor shall appoint another member to fill out the unexpired term.

(3) No member of the commission shall hold political office or be an officer of a political organization during his term, nor shall any member have held political office or have been an officer of a political organization during the twelve (12) months preceding his appointment. No member of the commission shall have been employed as an official or employee of the state of Idaho during the twelve (12) months preceding his appointment, nor be so employed during his term. The chairman shall be appointed by the governor prior to the first meeting of each calendar year.

(4) Any department aggrieved by any action or inaction of the division of human resources shall be afforded an opportunity for a hearing before the

division upon request therefor in writing. Minutes or summary of the proceedings of all hearings shall be made and filed with the division, together with findings of fact and conclusions of law made by the division.

(5) The governor may remove a commissioner for inefficiency, neglect of duty or misconduct in office after first giving him a copy of charges against him and an opportunity to be heard publicly before the governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the secretary of state.

(6) The commission shall meet at regularly scheduled intervals or on call of the chairman. Three (3) members shall constitute a quorum for the transaction of business. Members shall each be compensated as provided by [section 59-509\(n\), Idaho Code](#).

History.

1965, ch. 289, § 7, p. 746; am. 1975, ch. 164, § 3, p. 434; am. 1980, ch. 247, § 87, p. 582; am. 1996, ch. 104, § 1, p. 406; am. 1998, ch. 330, § 1, p. 1062; am. 1999, ch. 370, § 6, p. 976.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Compiler's Notes.

The phrase “the effective date of this chapter” in the second sentence in subsection (2) refers to the effective date of S.L. 1965, Chapter 289, which was effective March 29, 1965.

The phrase “the effective date of this chapter” in the third sentence in subsection (2) refers to the effective date of S.L. 1975, Chapter 164, which was effective July 1, 1975.

Effective Dates.

Section 3 of S.L. 1998, ch. 330 declared an emergency. Approved March 25, 1998.

§ 67-5308. Authority and duties of the division of human resources — Selection of administrator. — (1) It shall be the duty of the division of human resources to administer this chapter. The administrator of the division of human resources shall have the duty, power and authority to employ such persons, make such expenditures, require such reports, make investigations, perform such travel pursuant to the provisions of this chapter, and to take such other actions as it deems necessary or suitable to that end.

(2) An administrator of the division of human resources in the office of the governor shall be appointed by the governor, shall be subject to confirmation by the senate and shall serve at the pleasure of [the] governor. The administrator shall be experienced in personnel administration. The administrator shall provide necessary support to the commission when it carries out its duties.

History.

1965, ch. 289, § 8, p. 746; am. 1998, ch. 330, § 2, p. 1062; am. 1999, ch. 370, § 7, p. 976.

STATUTORY NOTES

Compiler's Notes.

The bracketed term “[the]” in subsection (2) was inserted by the compiler to correct the 1999 amendment of this section.

Effective Dates.

Section 3 of S.L. 1998, ch. 330 declared an emergency. Approved March 25, 1998.

§ 67-5309. Rules of the division of human resources and the personnel commission. — The administrator of the division of human resources shall have the power and authority to adopt, amend, or rescind such rules as may be necessary for proper administration of this chapter. Such rules may include:

(a) A rule requiring the administrator, after consulting with each department, to develop, adopt, and make effective a job classification system for positions covered by this chapter, based upon an analysis of the duties and responsibilities of the positions. The job classification shall include an appropriate title for each class and a description of duties and responsibilities of positions in the classes and the requirements of minimum training, experience and other qualifications suitable for the performance of duties of the position.

(b) A rule describing the relevant labor markets and benchmark job classifications used in the administrator's salary surveys.

(c) A rule requiring that all classes of positions which are common to the departments concerned shall have the same titles, minimum requirements and compensation ranges.

(d) A rule providing for review by the administrator of the personnel system including classifications and compensation policies and procedures.

(e) A rule that, notwithstanding the procedure for examination and ranking of eligibles on a register provided in subsection (f) of this section, an agency may appoint an individual directly into an entrance or promotional probation if the division of vocational rehabilitation, Idaho commission for the blind and visually impaired or the industrial commission certifies, with the concurrence of division of human resources staff, that the individual: (1) has a disability or handicap as defined under state or federal law; (2) is qualified to perform the essential functions of a particular classified position with or without reasonable accommodation; and (3) lacks competitiveness in the examination process due to the disability or handicap. The probationary period as provided in subsection (j) of this section shall be the sole examination for such individuals.

(f) A rule requiring fair and impartial selection of appointees to all positions other than those defined as nonclassified in this chapter, on the basis of open competitive merit examinations or evaluations. An application for an examination will be accepted after the closing date of the examination from a person who was serving in the armed forces or undergoing service-connected hospitalization up to one (1) year following discharge. The application must be submitted within one hundred twenty (120) days of separation from the armed forces or hospitalization and prior to the expiration of the register established as a result of the examination. A disabled veteran may file an application at any time up until a selection has been made for any position for which the division maintains a register as a source for future job openings or for which a register is about to be established, provided he or she has not already been examined twice for the same position and grade for which application is made, does not have current eligibility on that register, or is not serving in a competitive position in the same grade for which application is made. Examinations may be assembled or unassembled and may include various examining techniques such as rating of training and experience, written tests, oral interviews, recognition of professional licensing, performance tests, investigations and any other measure of ability to perform the duties of the position. Examinations shall be scored objectively. Five (5) points shall be added to the earned rating of any veteran as defined in [section 65-203, Idaho Code](#), and the widow or widower of any veteran as defined in [section 65-203, Idaho Code](#), as long as he or she remains unmarried. Pursuant to [section 65-504, Idaho Code](#), ten (10) points shall be added to the earned rating of any disabled veteran as defined in [section 65-502, Idaho Code](#), the widow or widower of any disabled veteran as long as he or she remains unmarried, or the spouse of any eligible disabled veteran who cannot qualify for any public employment because of a service-connected disability. Employment registers shall be established in order of final score except that the names of all five (5) and ten (10) point preference eligibles resulting from any merit system or civil service examination shall be placed on the register in accordance with their augmented rating. Certification of eligibility for appointment to vacancies shall be in accordance with a formula that limits selection by the hiring department from among the twenty-five (25) top ranking available eligibles plus the names of all individuals with scores identical to the twenty-fifth ranking eligible on the register. A register with

at least five (5) eligibles shall be adequate. Selective certification shall be permitted when justified by the hiring department, under rules to be made by the division defining adequate justification based on the duties and requirements of the positions. Such examinations need not be held until after the rules have been adopted, the service classified and a pay plan established, but shall be held not later than one (1) year after departments commence participation in the personnel system.

(g) A rule that, whenever practicable, a vacancy in a classified position shall be filled by the promotion of a qualified employee of the agency in which the vacancy occurs. An interagency promotion shall be made through competitive examination and all qualified state employees shall have the opportunity to compete for such promotions. If an employee's name appears within certifiable range on a current register for a higher class of position, he shall be eligible for a transfer and promotion.

(h) A rule for development and maintenance of a system of service ratings and the use of such ratings by all departments in connection with promotions, demotions, retentions, separations and reassignments. The rule shall require that an evaluation of each classified employee shall be made after each two thousand eighty (2,080) hour period of credited state service and that a copy of the evaluation shall be filed with the division.

(i) A rule prohibiting disqualification of any person from taking an examination, from appointment to a position, from promotion, or from holding a position because of race or national origin, color, sex, age, political or religious opinions or affiliations, and providing for right of appeal.

(j) A rule establishing a probation period not to exceed one thousand forty (1,040) hours of credited state service for all appointments and promotions, except that peace officers as defined in [section 19-5101, Idaho Code](#), shall be subject to a probation period of two thousand eighty (2,080) hours of credited state service, and for the appointing authority to provide the employee and the administrator a performance evaluation indicating satisfactory or unsatisfactory performance not later than thirty (30) days after the expiration of the probationary period. The rule shall provide that if the appointing authority fails to provide a performance evaluation within thirty (30) days after the expiration of the probationary period, the

employee shall be deemed to have satisfactorily completed the probation unless the appointing authority receives approval from the administrator to extend the probationary period for good cause for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. If an employee is performing in an unsatisfactory manner during the entrance probationary period, the appointing authority shall ask the employee to resign and, if no resignation is submitted, shall terminate the employment of such employee without the right of grievance or appeal.

(k) A rule concerning temporary appointments.

(l) A rule governing the employment of consultants and persons retained under independent contract.

(m) A rule for the disciplinary dismissal, demotion, suspension or other discipline of employees only for cause with reasons given in writing. Such rule shall provide that any of the following reasons shall be proper cause for the disciplinary dismissal, demotion or suspension of any employee in the state classified service:

1. Failure to perform the duties and carry out the obligations imposed by the state constitution, state statutes and rules of the employee's department, or rules of the administrator or the division.
2. Inefficiency, incompetency, or negligence in the performance of duties, or job performance that fails to meet established performance standards.
3. Physical or mental incapability for performing assigned duties.
4. Refusal to accept a reasonable and proper assignment from an authorized supervisor.
5. Insubordination or conduct unbecoming a state employee or conduct detrimental to good order and discipline in the employee's department.
6. Intoxication on duty.
7. Careless, negligent, or improper use or unlawful conversion of state property, equipment or funds.
8. Use of any influence that violates the principles of the merit system in an attempt to secure a promotion or privileges for individual advantage.

9. Conviction of official misconduct in office, or conviction of any crime that is deemed relevant in accordance with [section 67-9411\(1\), Idaho Code](#).

10. Acceptance of gifts in exchange for influence or favors given in the employee's official capacity.

11. Habitual pattern of failure to report for duty at the assigned place and time.

12. Habitual improper use of sick leave privileges.

13. Unauthorized disclosure of confidential information from official records.

14. Absence without leave.

15. Misstatement or deception in the application for the position.

16. Failure to obtain or maintain a current license or certificate lawfully required as a condition for performing the duties of the job.

17. Prohibited participation in political activities.

(n) A rule to establish procedures for maintenance of a record of the employment history and appropriate information relating to performance of all employees under the personnel system. For the purposes of this rule, the state shall be considered one (1) employer.

(o) Rules to provide for recruitment programs in cooperation with department heads and the employment security agency in keeping with current employment conditions and labor market trends.

(p) Rules to establish procedures for examinations as necessary for the purpose of maintaining current registers from which to fill employment vacancies.

(q) Other rules not inconsistent with the foregoing provisions of this section as may be necessary and proper for the administration and enforcement of this chapter.

(r) A rule concerning "project exempt" appointments.

(s) Rules relating to leave for state employees from official duties including, but not limited to, sick leave, military leave, jury duty, leaves of

absence without compensation and such other forms of absence from performance of duties in the course of state employment as may be necessary.

(t) A rule providing up to twenty-five percent (25%) shift differential pay based on local market practices.

(u) A rule to establish guidelines for awarding employee suggestion awards set forth in sections 59-1603 and 67-5309D, Idaho Code.

(v) A rule to establish the reimbursement of moving expenses for a current or newly hired state employee.

(w) A rule to allow, at the request of the hiring agency, temporary service time to count toward fulfilling entrance probationary requirements as established in subsection (j) of this section.

(x) A rule to allow, at the request of the hiring agency, acting appointment service time to count toward fulfilling promotional probationary requirements as established in subsection (j) of this section.

History.

1965, ch. 289, § 9, p. 746; am. 1969, ch. 171, § 2, p. 510; am. 1972, ch. 52, § 1, p. 93; am. 1973, ch. 58, § 1, p. 93; am. 1975, ch. 164, § 4, p. 434; am. 1976, ch. 367, § 2, p. 1205; am. 1979, ch. 36, § 1, p. 53; am. 1981, ch. 133, § 3, p. 221; am. 1986, ch. 127, § 1, p. 327; am. 1986, ch. 133, § 4, p. 341; am. 1987, ch. 99, § 1, p. 194; am. 1989, ch. 85, § 1, p. 146; am. 1990, ch. 161, § 1, p. 350; am. 1993, ch. 67, § 1, p. 177; am. 1993, ch. 104, § 1, p. 262; am. 1994, ch. 159, § 4, p. 359; am. 1994, ch. 272, § 2, p. 836; am. 1994, ch. 294, § 1, p. 928; am. 1997, ch. 163, § 1, p. 469; am. 1999, ch. 370, § 8, p. 976; am. 2001, ch. 214, § 3, p. 844; am. 2002, ch. 134, § 2, p. 365; am. 2006, ch. 51, § 17, p. 145; am. 2006, ch. 380, § 8, p. 1175; am. 2010, ch. 80, § 1, p. 157; am. 2011, ch. 98, § 1, p. 235; am. 2014, ch. 26, § 2, p. 33; am. 2018, ch. 118, § 1, p. 250; am. 2020, ch. 44, § 5, p. 98; am. 2020, ch. 175, § 40, p. 500.

STATUTORY NOTES

Cross References.

Idaho commission for the blind and visually impaired, § 67-5401 et seq.

Industrial commission, § 72-501 et seq.

Amendments.

This section was amended by three 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 159, § 4, in the introductory paragraph, deleted “and regulations” following “rescind such rules”; in subsection (e), inserted “and visually impaired” following “Idaho commission for the blind” near the middle of the first sentence; in subdivision (n) 1., deleted “and regulations” following “rules” in two places; and in subdivision (t) added a comma after “from official duties, including” and after “but not limited to”.

The 1994 amendment, by ch. 272, § 2, in the introductory paragraph, deleted “and regulations” following “rescind such rules”; in subsection (a), substituted “job classification system” for “classification plan” in the first sentence; substituted “position” for “positions” at the end of the first sentence; substituted “job classification shall” for “classification plan will” in the last sentence; in subsection (b), substituted “describing the relevant labor markets and benchmark job classifications used in the commission’s salary surveys” for “requiring the personnel commission, after consulting with each department to develop, and adopt a comprehensive compensation plan for all classes of positions covered under this act. The compensation plan shall include salary schedules with the salary of each position consistent with the responsibility and difficulty of the work as outlined in the job specifications”; added “ranges” to the end of subsection (c); in subsection (d), substituted “classifications and compensation” for “classification and compensation plans”; in subdivision (n) 1., substituted “statutes and rules” for “statutes, rules and regulations” and deleted “and regulations” following “department, or rules”; and in subsection (u), inserted “five percent (5%)” and deleted “Beginning the first full pay period in fiscal year 1992, the rate of such differential pay shall be one and one-half percent (1 1/2%) of the employee’s hourly rate; beginning the first full pay period in fiscal year 1993, the differential pay rate shall be three percent (3%); and beginning the first full pay period of fiscal year 1994 and each fiscal year thereafter, the rate of differential pay shall be five percent (5%).”

The 1994 amendment, by ch. 294, § 1, in subsection (j), substituted “one thousand forty (1,040) hours of credited state service” for “six (6) months” in the first and second sentence and substituted “two thousand eighty (2,080) hours of credited state service” for “one (1) year” in the first sentence; and in subdivision (n) 1., substituted “statutes and rules” for “statutes, rules and regulations” and deleted “and regulations” following “department, or rules”.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 51, in subsection (f), substituted “service-connected hospitalization up to one (1) year following discharge” for “hospitalization of no more than one (1) year following discharge, during any period in which the examination was open” in the first sentence; inserted “up until a selection has been made” and “as a source for future job openings” in the present fourth sentence; in the present seventh sentence, inserted “percentage”, deleted “war” preceding “veteran” twice, and substituted “65-502” for “65-506” twice; in the present eighth sentence, substituted “65-504” for “65-506”, inserted “percentage”, “as defined in [section 65-502, Idaho Code](#)”, and “eligible”, and substituted “cannot qualify for any public employment because of a service-connected disability” for “is physically unable to perform the work in the position to which the spouse seeks to apply the preference”; in the present ninth sentence, inserted “and ten (10) percentage” and deleted “and the names of all ten (10) point preference eligibles shall be placed at the top of the register above the names of all nonpreference eligibles” at the end.

The 2006 amendment, by ch. 380, in subsection (g), deleted “permanent” preceding “employee” in the first sentence; in subsection (n)(2), added “or job performance that fails to meet established performance standards”; in subsection (u), substituted the current sentence for “A rule providing for five percent (5%) shift differential pay.”; and added subsections (v) through (x).

The 2010 amendment, by ch. 80, in the tenth sentence in subsection (f), substituted “twenty-five (25)” and “twenty-fifth” for “ten (10)” and “tenth” respectively.

The 2011 amendment by ch. 98, in subsection (x), deleted “and acting appointment” following “hiring agency, temporary” and substituted “subsection (j) of this section” for “[section 67-5309\(j\), Idaho Code](#)”; and added subsection (y).

The 2014 amendment, by ch. 26, in subsection (f), deleted “percentage” preceding “points” in the seventh and eighth sentences, and preceding “point” in the ninth sentence.

The 2018 amendment, by ch. 118, deleted former subsection (k), which read: “A rule concerning provisional appointments” and redesignated the remaining subsections accordingly.

This section was amended by two 2020 acts which appear to be compatible and have been compiled together.

The 2020 amendment, by ch. 44, substituted “may include” for “shall include” at the end of the introductory paragraph and substituted [section 65-203, Idaho Code](#) for “[section 65-502, Idaho Code](#)” twice near the middle of the seventh sentence in subsection (f).

The 2020 amendment, by ch. 175, rewrote paragraph (m)9., which formerly read: “Conviction of official misconduct in office, or conviction of any felony, or conviction of any other crime involving moral turpitude.”

Compiler’s Notes.

For more on Idaho division of vocational rehabilitation, referred to in subsection (e), see <https://vr.idaho.gov>.

Effective Dates.

Section 5 of S.L. 1976, ch. 367 provided that this section should be in full force and effect on and after July 1, 1976.

Section 3 of S.L. 2002, ch. 134 declared an emergency. Approved March 20, 2002.

CASE NOTES

[Conduct detrimental to department.](#)

[Credited state service.](#)

Inefficiency.

Insubordination.

Job description.

Probationary employees.

Removal of exempt employees.

Conduct Detrimental to Department.

Employee of department of correction was properly dismissed under this section, and a rule adopted pursuant thereto, where evidence supported findings that employee made false statements knowingly or with reckless disregard for their truth or falsity, which statements could do nothing but bring the institution and its principal officers into disrepute. *Munch v. Board of Cor.*, 105 Idaho 53, 665 P.2d 1063 (1983).

Court properly upheld an employee's termination for insubordination where the supervisor directed the employee twice to unplug a phone from an answering machine, the employee did not do so, and gave no explanation for his inaction. *Whittier v. Dep't of Health & Welfare*, 137 Idaho 75, 44 P.3d 1130 (2002).

Credited State Service.

This section refers to a probation period both for all appointments and for all promotions, not credited state service for both. Credited state service for purposes of meeting the 1,040 hour probationary requirement for a classified appointment does not begin to accrue until an employee has been appointed as a classified employee. *Fry v. Department of Cor.*, 131 Idaho 169, 953 P.2d 609 (1998) (see 2011 amendment).

Inefficiency.

The failure to meet a productivity standard would be competent evidence of charged inefficiency under this section. *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1985).

Insubordination.

An employee was properly terminated for insubordination, where the employee became upset during a meeting with a supervisor, slammed a pad

of paper on the supervisor's desk, and left the meeting without permission. [Horne v. Idaho State Univ.](#), 138 Idaho 700, 69 P.3d 120 (2003).

Job Description.

Failure to provide the required job description and evaluation deprives the employee of a fair chance to meet the expectations of those who hired him and gives the employer the means to make arbitrary and capricious decisions, and runs counter to the purpose and intent of the Personnel System Act; the failure by the state to comply with the statutory procedure constitutes a breach of the employment contract. [Brigham v. Department of Health & Welfare](#), 106 Idaho 347, 679 P.2d 147 (1984).

Hospital maintenance director should have been formally evaluated against a job-related job description, and given an opportunity to improve his performance in accord with established work standards, before being dismissed; after the fact application of an outdated and inapplicable job description and an evaluation made after the dismissal by the director of the hospital did not satisfy the statutory requirements. [Brigham v. Department of Health & Welfare](#), 106 Idaho 347, 679 P.2d 147 (1984).

The fact that job descriptions had been created for predecessor of hospital maintenance director did not fulfill the requirements for job description where director had been explicitly told during his hiring interview that he would be expected to operate in a different fashion than the former maintenance director, making the prior job description, created especially for his predecessor, inapplicable to new director. [Brigham v. Department of Health & Welfare](#), 106 Idaho 347, 679 P.2d 147 (1984).

The personnel commission must observe and be bound by its own rules; taking cognizance, or notice, of the job description which it had itself made for the job which the employee held was not only proper, but required. [Idaho State Ins. Fund v. Hunnicutt](#), 110 Idaho 257, 715 P.2d 927 (1985).

Probationary Employees.

Probationary hospital maintenance director who had been awarded one month's pay and an offer to permit his resignation and correction of his record because of wrongful discharge was not entitled to any damages or relief other than that which had already been afforded, since reinstatement would only have been as a probationary employee subject to discharge on

short notice. *Brigham v. Department of Health & Welfare*, 106 Idaho 347, 679 P.2d 147 (1984).

Unless specifically exempted from any of the rights accorded to all classified employees, probationary employees are entitled to the full range of procedural rights set forth in the act; the only right so denied probationary employees is the right to appeal a dismissal based on unsatisfactory performance. It is, therefore, clear that probationary employees are entitled to job descriptions and evaluations. *Brigham v. Department of Health & Welfare*, 106 Idaho 347, 679 P.2d 147 (1984).

Terminated employees were not entitled to damages because employer was not required to provide the employees with performance evaluations prior to terminating their probationary employment, and the employees were provided with sufficient job descriptions to satisfy the statutory requirements of this section. *Clark v. State*, 134 Idaho 527, 5 P.3d 988 (2000).

Removal of Exempt Employees.

Employees “exempt” under § 67-5303 do not enjoy the statutory protection that “classified employees” do; therefore, such employees are not entitled to the opportunity to respond to charges against them prior to their removal. *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185, cert. denied, 479 U.S. 1007, 107 S. Ct. 645, 93 L. Ed. 2d 701 (1986).

Cited *Swisher v. State Dep’t of Env’tl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977); *Allen v. Lewis-Clark State College*, 105 Idaho 447, 670 P.2d 854 (1983); *Stroud v. Department of Labor & Indus. Servs.*, 112 Idaho 891, 736 P.2d 1345 (Ct. App. 1987); *Hood v. Idaho Dep’t of Health & Welfare*, 125 Idaho 151, 868 P.2d 479 (1994); *Idaho Dep’t of Corr. v. Anderson*, 134 Idaho 680, 8 P.3d 675 (Ct. App. 2000).

§ 67-5309A. State employee compensation philosophy. — (1) It is hereby declared to be the intent of the legislature of the state of Idaho that the goal of a total compensation system for state employees shall be to fund a competitive employee compensation and benefit package that will attract qualified applicants to the work force; retain employees who have a commitment to public service excellence; motivate employees to maintain high standards of productivity; and reward employees for outstanding performance.

(2) The foundation for this philosophy recognizes that state government is a service enterprise in which the state work force provides the most critical role for Idaho citizens. Maintaining a competitive compensation system is an integral, necessary and expected cost of providing the delivery of state services and is based on the following compensation standards:

(a) The state's overall compensation system, which includes both a salary and a benefit component, when taken as a whole shall be competitive with relevant labor market averages.

(b) Advancement in pay shall be based on job performance and market changes.

(c) Pay for performance shall provide faster salary advancement for higher performers based on a merit increase matrix developed by the division of human resources.

(d) All employees below the state's midpoint market average in a salary range who are meeting expectations in the performance of their jobs shall move through the pay range toward the midpoint market average.

(3) It is hereby declared to be legislative intent that regardless of specific budgetary conditions from year to year, it is vital to fund necessary compensation adjustments each year to maintain market competitiveness in the compensation system. In order to provide this funding commitment in difficult fiscal conditions, it may be necessary to increase revenues, or to prioritize and eliminate certain functions or programs in state government, or to reduce the overall number of state employees in a given year, or any combination of such methods.

History.

I.C., § 67-5309A, as added by 2006, ch. 380, § 10, p. 1175.

STATUTORY NOTES**Prior Laws.**

Former § 67-5309A, which comprised I.C., § 67-5309A, as added by 1987, ch. 327, § 1, p. 685; am. 1994, ch. 272, § 3, p. 836; am. 2004, ch. 319, § 1, p. 902, was repealed by S.L. 2006, ch. 380, § 9.

Another former § 67-5309A was amended and redesignated as § 67-5315 by S.L. 1986, ch. 134, § 3.

CASE NOTES

Cited Stroud v. Department of Labor & Indus. Servs., 112 Idaho 891, 736 P.2d 1345 (Ct. App. 1987); Department of Health & Welfare v. Sandoval, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987).

§ 67-5309B. Idaho compensation plan. — (1) The administrator of the division of human resources shall establish benchmark job classifications and shall assign all classifications to a pay grade utilizing the Hay profile method in combination with market data. Pay grades established or revised by the administrator shall appropriately weigh Hay points and market data to ensure internal equity and market equity within the classified service.

(2) It shall be the responsibility of each department director to prepare a department salary administration plan and corresponding budget plan that supports the core mission of the department and is consistent with the provisions of [section 67-5309A, Idaho Code](#).

(3) Advancement in pay shall be based on performance and market changes and be provided in a variety of delivery methods, including ongoing increases, temporary increases and market related payline moves. Market related payline moves may advance all eligible employees as well as the structure to avoid compression in the salary system.

(4) Pay for performance shall provide faster salary advancement for higher performers based on a merit increase matrix developed by the division of human resources. Such matrix shall be based upon the employee's proximity to the state midpoint market average, and the employee's relative performance. Such matrix may be adapted by each agency to meet its specific needs when approved by the division of human resources.

(5) No employee shall advance in a salary range without a performance evaluation on file certifying that the employee meets the performance criteria of the assigned position.

(6) Each employee's work performance shall be evaluated through a format and process approved by the department and the division of human resources. The employee shall be evaluated after one thousand forty (1,040) hours of credited state service from the date of initial appointment or promotion, and thereafter be evaluated after each two thousand eighty (2,080) hours of credited state service. Employees may be eligible for advancement in pay if certified as meeting the performance requirements of

this section. However, such in-grade advancement shall not be construed as a vested right. The department director shall designate in writing whether such in-grade advancement is temporary, conditional or permanent. It shall be the specific responsibility of the employee's immediate supervisor to effect the evaluation process. Such evaluation shall be approved by the department director or the director's designee.

(7) All supervisors who evaluate state employees shall receive training in the evaluation format and process to assure fairness and consistency in the evaluation process.

(8) Notwithstanding any other provision of Idaho Code, it is hereby declared to be the policy of the legislature of the state of Idaho that all classified employees of like classification and pay grade allocation shall be treated in a substantially similar manner with reference to personnel benefits.

History.

I.C., § 67-5309B, as added by 2006, ch. 380, § 12, p. 1175.

STATUTORY NOTES

Prior Laws.

Former § 67-5309B, which comprised **I.C., § 67-5309B**, as added by 1976, ch. 367, § 3, p. 1205; am. 1977, ch. 177, § 1, p. 457; am. 1981, ch. 133, § 4, p. 221; am. 1994, ch. 272, § 4, p. 836; am. 1999, ch. 370, § 9, p. 976; am. 2004, ch. 319, § 2, p. 902, was repealed by S.L. 2006, ch. 380, § 11.

Effective Dates.

Section 5 of S.L. 1976, ch. 367 provided that this section should be in full force and effect on and after July 1, 1976.

Section 2 of S.L. 1977, ch. 177 declared an emergency. Approved March 30, 1977.

§ 67-5309C. Annual surveys, reports and recommendations. — (1)

The administrator of the division of human resources shall conduct or approve annual salary and benefit surveys within relevant labor markets to determine salary ranges and benefit packages that represent competitive labor market average rates and benefits provided by private industry and other governmental units.

(2) A report of the results of the annual salary and benefit surveys and recommendations for changes to meet the requirements of [section 67-5309A, Idaho Code](#), together with their estimated costs of implementation, shall be submitted to the governor and the legislature not later than the first day of December of each year. The recommendation shall include, at a minimum, four (4) components to address the compensation philosophy described in [section 67-5309A, Idaho Code](#), and shall include specific funding recommendations for each component:

(a) A recommendation for market related changes necessary to address system wide structure adjustments to stay competitive with relevant labor markets. Such recommendation may include a market related payline adjustment for all eligible employees, as well as the structure, to avoid compression in the salary system.

(b) A recommendation for market related changes necessary to address specific occupational inequities.

(c) A recommendation for a merit increase component to recognize and reward state employees in the performance of public service to the citizens of Idaho.

(d) A recommendation for any changes to the employee benefit package, including any adjustments to the overall design of the benefit package and/or employee contributions.

(3) The governor shall submit his own recommendations on proposed changes in salaries and benefits to the legislature prior to the seventh legislative day of each session. Such recommendation shall address, at a minimum, the four (4) components and subsequent funding for each component required in this section.

(4) The legislature may, by concurrent resolution, accept, modify or reject the governor's recommendations, but any such action by the legislature, at a minimum, shall address the four (4) components and subsequent funding of each component required in this section. The failure of the legislature to accept, modify or reject the recommendations prior to adjournment sine die shall constitute approval of the governor's recommendations, and such recommendations shall be funded through appropriations provided by law. The administrator of the division of human resources shall implement necessary and authorized changes to salary and pay schedule by rule. The director of the department of administration shall implement necessary and authorized changes to benefits.

History.

I.C., § 67-5309C, as added by 2006, ch. 380, § 14, p. 1175.

STATUTORY NOTES

Prior Laws.

Former § 67-5309C, which comprised **I.C., § 67-5309C**, as added by 1992, ch. 199, § 2, p. 615; am. 1993, ch. 226, § 1, p. 792; am. 1994, ch. 272, § 5, p. 836; am. 1999, ch. 370, § 10, p. 976; am. 2000, ch. 296, § 1, p. 1023; am. 2003, ch. 168, § 1, p. 476, was repealed by S.L. 2006, ch. 380, § 13.

Another former § 67-5309C, which comprised **I.C., § 67-5309C**, as added by 1981, ch. 348, § 2, p. 720; am. 1983, ch. 210, § 2, p. 583; am. 1988, ch. 289, § 1, p. 923, was repealed by S.L. 1992, ch. 199, § 1.

Effective Dates.

Section 3 of S.L. 1992, ch. 199 read: "An emergency existing therefore, which emergency is hereby declared to exist, this act shall be in full force and effect on and after June 7, 1992." Approved April 8, 1992.

Section 2 of S.L. 1993, ch. 226 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after June 6, 1993."

Section 8 of S.L. 1994, ch. 272 provided that this act shall be in full force and effect on and after June 5, 1994.

§ 67-5309D. Other pay delivery options. — (1) In addition to pay increases authorized in section 67-5309B, Idaho Code, the department director may grant a classified employee bonus pay not to exceed two thousand dollars (\$2,000) in any given fiscal year based upon exemplary performance. Exceptions to the two thousand dollar (\$2,000) limit provided in this subsection may be granted in extraordinary circumstances if approved in advance by the state board of examiners. Departments shall submit a report to the division of financial management and the legislative services office by October 1 on all bonuses granted in the preceding fiscal year.

(2) In addition to pay increases authorized in section 67-5309B, Idaho Code, the department director may grant a classified employee an award payment based upon suggestions or recommendations made by the employee that resulted in taxpayer savings as a result of cost savings or greater efficiencies to the department or to the state of Idaho in excess of the amount of the award, and in compliance with the rules for employee suggestion awards promulgated by the division of human resources. The award may be an amount up to twenty-five percent (25%) of the amount determined to be the dollar savings to the state, but not in excess of two thousand dollars (\$2,000). Exceptions to the two thousand dollar (\$2,000) limit provided in this subsection may be granted in extraordinary circumstances if approved in advance by the state board of examiners. Departments shall submit a report to the division of financial management and the legislative services office by October 1 on all employee suggestion awards granted in the preceding fiscal year. Such report shall include any changes made as a direct result of an employee's suggestion and savings resulting therefrom.

(3) In addition to pay increases authorized in [section 67-5309B, Idaho Code](#), the department director may grant award pay to a classified employee for recruitment or retention purposes upon completion of at least six (6) months of achieving performance standards. The department director and the administrator of the division of human resources are authorized to seek legal remedies available, including deductions from an employee's accrued vacation funds, from an employee who resigns during the designated period

of time after receipt of a recruitment or retention bonus. Departments shall submit a report to the division of financial management and the legislative services office by October 1 on all such awards granted in the preceding fiscal year.

(4) In addition to pay increases authorized in [section 67-5309B, Idaho Code](#), department directors may provide a classified employee other nonperformance related pay as provided in this subsection. Departments shall submit a report to the division of financial management and the legislative services office by October 1 on all such awards granted in the preceding fiscal year.

(a) Shift differential pay up to twenty-five percent (25%) of hourly rates depending on local market rates in order to attract and retain qualified staff.

(b) Geographic differential pay in areas of the state where recruitment and retention of qualified staff are difficult due to economic conditions and cost of living.

(c) Employees in the same classification who are similarly situated shall be treated consistently in respect to shift differential and geographic pay differential.

(5) When necessary to obtain or retain qualified personnel in a particular classification, upon petition of the department to the administrator containing acceptable reasons therefor, a higher temporary pay grade may be authorized by the administrator that, if granted, shall be reviewed annually to determine the need for continuance.

(6) In unusual circumstances, with prior approval from the administrators of the division of human resources and the division of financial management, agencies may grant nonperformance related pay to employees, which in no case may exceed five percent (5%) of an employee's base pay. Departments shall submit a report to the division of financial management and the legislative services office by October 1 on all such awards granted in the preceding fiscal year.

(7) Specific pay codes shall be established and maintained in the state controller's office to ensure accurate reporting and monitoring of all pay actions authorized in this section.

History.

I.C., § 67-5309D, as added by 2006, ch. 380, § 15, p. 1175; am. 2017, ch. 91, § 1, p. 238.

STATUTORY NOTES**Cross References.**

Division of financial management, § 67-1910.

Division of human resources, § 67-5301.

Legislative services office, § 67-701 et seq.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

Amendments.

The 2017 amendment, by ch. 91, inserted the present second sentence in subsection (3).

§ 67-5310. Service to other political subdivisions. — Subject to the approval of the administrator, agreements may be entered into with any political subdivision of the state of Idaho to furnish services and facilities of the division and staff to such political subdivisions in the administration of their personnel on merit principles. Any such agreement shall provide for reimbursement to the division of the reasonable cost of the services or facilities furnished as determined by the administrator.

History.

1965, ch. 289, § 10, p. 746; am. 1999, ch. 370, § 11, p. 976.

CASE NOTES

Sheriff's Deputies.

The merit system adopted by a board of county commissioners, which prohibited the dismissal of deputies and other employees without cause, did not violate the sheriff's constitutional right to appoint deputies and other employees. [Hansen v. White, 114 Idaho 907, 762 P.2d 820 \(1988\)](#).

Once a sheriff's deputy attains "permanent" status under a merit system, the deputy is no longer an employee "at will." Consequently, the sheriff's implied power to terminate employees without cause, which arises from the common law, not the constitution, is superseded by the merit system. [Hansen v. White, 114 Idaho 907, 762 P.2d 820 \(1988\)](#).

§ 67-5311. Limitation of political activity. — (1) No classified employee of a state department covered by this act shall:

(a) Use his official authority or influence for the purpose of interfering with an election to or a nomination for office, or affecting the result thereof; (b) Directly or indirectly coerce, attempt to coerce, command, or direct any other such officer or employee to pay, lend, or contribute any part of his salary or compensation or anything else of value to any party, committee, organization, agency, or person for political purposes; or (c) Be a candidate and hold elective office in any partisan election.

(2) All such employees shall retain the right to:

(a) Register and vote in any election;

(b) Express an opinion as an individual privately and publicly on political subjects and candidates; (c) Display a political picture, sticker, badge, or button; (d) Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization; (e) Be a member of a political party or other political organization and participate in its activities; (f) Attend a political convention, rally, fund-raising function, or other political gathering; (g) Sign a political petition as an individual;

(h) Make a financial contribution to a political party or organization; (i) Take an active part, in support of a candidate, in an election; (j) Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character; (k) Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law; (l) Be a candidate and hold elective office in any nonpartisan election; (m) Take an active part in political organization management; and (n) Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise the neutrality, efficiency, or integrity of the employee's administration of state functions.

History.

1965, ch. 289, § 11, p. 746; am. 1975, ch. 164, § 6, p. 434; am. 1986, ch. 133, § 5, p. 341; am. 1987, ch. 168, § 1, p. 328.

STATUTORY NOTES

Compiler's Notes.

The term “this act”, in the introductory paragraph, refers to S.L. 1965, Chapter 289, which is codified as §§ 67-5301 to 67-5303, 67-5304 to 67-5309, and 67-5310 to 67-5314. The reference probably should be to “this chapter,” meaning chapter 53, title 67, Idaho Code.

CASE NOTES

Eligibility for office.

Statement as individual.

Eligibility for Office.

While one subject to this act may be prohibited from running for office, such prohibition does not render him ineligible to office. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

Statement As Individual.

Substantial, competent evidence supported the commission's finding that state agency employee's statement was not made “as an individual;” therefore, he did not retain the right to express his opinion concerning certain legislators pursuant to this section. *Lockhart v. State, Dep't of Fish & Game*, 127 Idaho 546, 903 P.2d 135 (Ct. App. 1995).

§ 67-5312. Violations. — Any person wilfully violating any of the provisions of this act or of the rules or regulations established thereunder shall be guilty of a misdemeanor.

History.

1965, ch. 289, § 12, p. 746.

STATUTORY NOTES

Cross References.

Punishment for misdemeanors when not otherwise provided, § 18-113.

Compiler's Notes.

The term “this act”, in this section, refers to S.L. 1965, Chapter 289, which is codified as §§ 67-5301 to 67-5303, 67-5304 to 67-5309, and 67-5310 to 67-5314. The reference probably should be to “this chapter,” meaning chapter 53, title 67, Idaho Code.

CASE NOTES

Eligibility for Office.

Since this section provides an express penalty for one subject to this act engaging in politics, an additional penalty such as ineligibility for elective office cannot be presumed. *Jordan v. Pearce*, 91 Idaho 687, 429 P.2d 419 (1967).

§ 67-5313. Veterans' preference. — Veterans' preference as provided in title 65, chapter 5, Idaho Code, shall be observed except that entrance probationary periods are governed exclusively by the provisions of this chapter.

History.

1965, ch. 289, § 13, p. 746; am. 1993, ch. 21, § 1, p. 79.

CASE NOTES

Cited James v. DOT, 125 Idaho 892, 876 P.2d 590 (1994).

§ 67-5314. Method of financing. — (1) There is hereby created in the state treasury the division of human resources fund. All participating departments are hereby authorized and directed to pay out of their funds to the state treasurer their respective shares of the authorized budget of the division. All moneys placed in said fund are hereby perpetually appropriated to the division for the administrative purposes of this chapter. All expenditures from said fund shall be paid out in warrants drawn by the state controller upon presentation of proper vouchers from the administrator.

(2) The division shall allocate costs of its operation to each participating department in the same proportion that the amount of the payroll for classified employees of the department bears to the total amount of the payroll for classified employees of all departments combined and averaged as to the basis for allocation of costs.

(3) Each participating department shall deposit to said fund on a pay period basis as prescribed by the state controller, an amount equal to its share of costs of operation of the human resources division according to the cost allocation formula set forth above. Departmental deposits for each succeeding fiscal year shall be at a percentage rate of salaries and wages for positions subject to this chapter, computed to be sufficient to carry out the intent and all provisions of this chapter as directed by the legislature.

History.

1965, ch. 289, § 14, p. 746; am. 1977, ch. 307, § 4, p. 856; am. 1984, ch. 238, § 1, p. 569; am. 1994, ch. 180, § 220, p. 420; am. 1999, ch. 370, § 12, p. 976.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 220 was effective January 2, 1995.

§ 67-5315. Establishment and adoption of employee problem solving and due process procedures. — (1) Each participating department shall, on or before July 1, 1999, establish and adopt an employee problem solving procedure within such department, which shall be reduced to writing and shall be in full compliance with the provisions of the uniform problem solving procedure as adopted by rule by the administrator pursuant to subsection (4) of this section. The department problem solving procedure shall be approved by the administrator prior to implementation. A copy of the approved problem solving procedure plan shall be furnished and explained to each employee of the department concerned. No employee shall be disciplined or otherwise prejudiced in his employment for exercising his rights under the plan, and department heads shall encourage the use of the plan in the resolution of grievances arising in the course of public employment. A classified employee may file under the problem solving procedure any matter, except that compensation shall not be deemed a proper subject for consideration under the problem solving procedure except as it applies to alleged inequities within a particular agency or department, and except for termination during the entrance probationary period, and except for those matters set forth in subsection (2) of this section.

(2) No action of a participating department relating to a disciplinary dismissal, suspension or demotion, or an involuntary transfer shall be effective until the affected employee shall have received notice and an opportunity to be heard. The employee may then appeal to the Idaho personnel commission those disciplinary matters set forth in [section 67-5316\(1\)\(a\), Idaho Code](#).

(3) If the filing concerns a matter which is reviewable pursuant to [section 67-5316, Idaho Code](#), the time for appeal to the commission shall not commence to run until the employee has completed the problem solving procedure provided by the department in accordance with the terms thereof or, in the case of disciplinary actions set forth in subsection (2) of this section, until the disciplinary action becomes effective; provided, however, the failure of an employee to pursue the problem solving procedures

established within the department shall constitute a waiver of the employee's right of review by the commission.

(4) On or before July 1, 1999, the division of human resources shall adopt a rule defining uniform problem solving and due process procedures for use by all participating departments. With respect to the problem solving procedure, the rule shall provide a complete procedure for all stages of the process, including problem solving meetings with department representatives in the employee's chain of command. With respect to the due process procedure, the rule shall provide that the employee receive notice and an opportunity to be heard before the department decides in favor of disciplinary action. The rule shall also provide for time periods for each step of the procedures. The rule shall provide for the use of an impartial mediator upon agreement between the agency and the employee. The employee shall be entitled to be represented by a person of the employee's own choosing at each step of the procedures, except the initial informal discussion with the immediate supervisor prior to filing under the problem solving procedure.

History.

I.C., § 67-5309A, as added by 1973, ch. 165, § 1, p. 316; am. 1975, ch. 164, § 5, p. 434; am. 1983, ch. 210, § 1, p. 583; redesign. and am. 1986, ch. 134, § 3, p. 355; am. 1987, ch. 100, § 1, p. 198; am. 1997, ch. 364, § 1, p. 1073; am. 1999, ch. 370, § 13, p. 976.

STATUTORY NOTES

Prior Laws.

Former § 67-5315, which comprised 1965, ch. 289, § 15, p. 746; am. 1974, ch. 34, § 5, p. 988, was repealed by S.L. 1986, ch. 134, § 2.

Compiler's Notes.

This section was formerly compiled as § 67-5309A.

Effective Dates.

Section 2 of S.L. 1987, ch. 100 declared an emergency. Approved March 25, 1987.

CASE NOTES

Choice of counsel.

Exhaustion of administrative remedies.

Failure to follow grievance procedure.

Performance evaluation.

Removal without prior hearing.

Review procedure.

Termination during probationary period.

Choice of Counsel.

Although the personnel system statute provides that an employee may choose his own counsel, it does not grant the employee an absolute right to choose any attorney regardless of other facts. *Fridenstine v. Idaho Dep't of Admin.*, 133 Idaho 188, 983 P.2d 842 (1999).

Where an employee and his counsel of choice should have recognized the obvious conflicts the representation created, it was not improper for the employer to object to that representation or to consider the employee's failure to recognize and address those concerns as a basis for his dismissal. *Fridenstine v. Idaho Dep't of Admin.*, 133 Idaho 188, 983 P.2d 842 (1999).

Exhaustion of Administrative Remedies.

Where terminated employee failed to show that justice required relaxation of the exhaustion rule or that the department of law enforcement acted outside its authority, the general rule of exhaustion of administrative remedies applied; therefore, the district court correctly dismissed former employee's claims for failure to exhaust administrative remedies. *Arnzen v. State*, 123 Idaho 899, 854 P.2d 242 (1993).

Where forms containing corrections officers' personal information were disclosed to an inmate during criminal proceeding discovery, officers' retaliation claims were properly dismissed because they failed to exhaust their administrative remedies, since they did not pursue any grievance procedure; the officers sought damages for allegedly tortious conduct and

this conduct was closely tied to the adverse employment action. *Nation v. State*, 144 Idaho 177, 158 P.3d 953 (2007).

Failure to Follow Grievance Procedure.

Where a department of health and welfare employee brought an action arguing that the proposed reorganization of the department violated personnel commission regulations and Idaho statutory law governing state employees, the trial court properly granted the department's motion to dismiss, since the employee should have taken the matter up through the appeal procedure set out in this chapter. *Service Employees Int'l Local 6 v. Idaho Dep't of Health & Welfare*, 106 Idaho 756, 683 P.2d 404 (1984).

Performance Evaluation.

The state personnel commission lacked jurisdiction to hear an employee's appeal of a performance evaluation grievance, under provisions of this section and § 67-5316 specifically limiting the types of appeals to be decided. *Sheets v. Idaho Dep't of Health & Welfare*, 114 Idaho 111, 753 P.2d 1257 (1988).

Removal without Prior Hearing.

Employees "exempt" under § 67-5303 do not enjoy the statutory protection that "classified employees" do; therefore, such employees are not entitled to the opportunity to respond to charges against them prior to their removal. *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185, cert. denied, 479 U.S. 1007, 107 S. Ct. 645, 93 L. Ed. 2d 701 (1986).

Review Procedure.

An employee aggrieved by a decision at the department level has two avenues available for review. First, if the matter is not reviewable by the personnel commission pursuant to § 67-5316, the employee may seek judicial review under the Administrative Procedure Act within 30 days of the completion of the grievance procedure in the department. Second, if the matter is reviewable by the personnel commission pursuant to § 67-5316, the employee may appeal to the commission within 30 days (now 35 days) of the completion of the department's grievance procedure. *Pounds v. Denison*, 115 Idaho 381, 766 P.2d 1262 (Ct. App. 1988).

The procedures of the Idaho Personnel System Act must be followed to exhaust the administrative remedies offered before a classified employee may sue upon a claim pertaining to his employment. Therefore, the act provides the exclusive procedure for remedying initially all grievances within its subject matter. *Pounds v. Denison*, 115 Idaho 381, 766 P.2d 1262 (Ct. App. 1988).

Termination During Probationary Period.

A department of transportation employee who was terminated during his entrance probationary period was not, pursuant to subsection (1) of this section and the department's grievance procedure, entitled to grieve his termination. *James v. DOT*, 125 Idaho 892, 876 P.2d 590 (1994).

Cited *Stroud v. Department of Labor & Indus. Servs.*, 112 Idaho 891, 736 P.2d 1345 (Ct. App. 1987); *Department of Health & Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987); *Starr v. Idaho Transp. Dep't*, 118 Idaho 127, 795 P.2d 21 (Ct. App. 1990); *Sanchez v. Idaho Dep't of Cor.*, 134 Idaho 523, 5 P.3d 984 (2000); *Jensen v. State*, 139 Idaho 57, 72 P.3d 897 (2003).

§ 67-5316. Appeal procedure. — (1) Appeals shall be limited to the following:

(a) Any classified employee who has successfully completed the entrance probationary period may, after completing the departmental due process procedure, appeal a disciplinary dismissal, demotion or suspension.

(b) Any classified employee may, after completing the departmental problem solving procedure, appeal the failure of an appointing authority to provide a right and/or benefit to which the employee is entitled by law.

(c) Any interested person may appeal any decision or action taken by the administrator of the division of human resources or the staff of the division of human resources in the performance of their official duties.

(d) Any interested person may appeal any other matters as may now or later be assigned to the personnel commission by law.

(2) The decision or action of the appointing authority shall be final and conclusive unless a classified employee files an appeal within thirty-five (35) days after completing the departmental problem solving or due process procedure concerning the actions referred to in subsection (1)(a), (b), (c) and (d) of this section. A decision of the administrator shall be final and conclusive as to any other interested person unless an appeal is filed within thirty-five (35) days of written notice of that decision.

(3) The commission shall assign the matter for hearing to a duly appointed hearing officer, who may be a member of the commission.

(4) Where the action in dispute was the discharge, demotion, or suspension, upon determination that proper cause did not in fact exist within the definitions set forth in [section 67-5309\(m\), Idaho Code](#), or that the action was taken by reason of illegal discrimination, the commission or the hearing officer shall order the reinstatement of the employee in the same position or a position of like status and pay, with or without loss of pay for the period of discharge, demotion, or suspension, or may order such other remedy as may be determined to be appropriate. In all other disputed matters, the commission and the hearing officer may order such action as may be appropriate.

(5) Process and procedure under this act shall be as summary and simple as reasonably may be. The hearing officer appointed by the commission shall have the power to subpoena witnesses, administer oaths, and examine such of the books and records of the parties to a proceeding as relate to the questions in dispute. A verbatim record of the proceedings at hearings before the commission or a hearing officer shall be maintained either by electrical devices or by stenographic means, as the commission or hearing officer may direct, but if any party to the action requests a stenographic record of the proceedings, the record shall be done stenographically. The requesting party shall pay the costs of transcribing the proceedings.

The district court, in and for the county in which any proceedings before the Idaho personnel commission are held, shall have the power to enforce by proper proceedings the attendance and testimony of witnesses, and production and examination of books, papers, and records.

(6) If the parties reach an agreement in regard to the matters of dispute, a memorandum of the agreement shall be filed with the commission and, if approved by it, the memorandum shall be enforceable for all purposes.

(7) The hearing officer shall give written notice of the time and place of hearing, either by personal service or by mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party's last known address, as shown in the records and files of the commission. An affidavit of personal service shall be filed by the person making the same.

(8) The hearing officer to whom the matter has been assigned shall make such inquiry and investigations as shall be deemed necessary. The hearings shall be held in such place as the hearing officer may designate. The decision of the hearing officer, consisting of such findings of fact, conclusions of law and orders as are necessary, together with the record of the proceedings, shall be filed in the office of the Idaho personnel commission. A copy of the hearing officer's decision shall be immediately sent to the parties by United States mail. The decision of the hearing officer shall be final and conclusive between the parties, unless a petition for review is filed with the commission within thirty-five (35) days. The petition for review shall specifically cite the alleged errors of fact or law made by the hearing officer.

(9) Any party in interest may file in the district court for the county in which any party to the proceedings resides, a certified copy of the final decision of the hearing officer, which the district court shall have the power to enforce by proper proceedings.

(10) Where the decision and order of the hearing officer directed the reinstatement of an employee, the employee shall be reinstated upon receipt of a copy of the decision unless a petition for review is filed.

History.

I.C., § 67-5316, as added by 1969, ch. 171, § 3, p. 510; am. 1977, ch. 307, § 5, p. 856; am. 1979, ch. 192, § 2, p. 554; am. 1986, ch. 134, § 4, p. 355; am. 1997, ch. 364, § 2, p. 1073; am. 1999, ch. 243, § 2, p. 616; am. 1999, ch. 370, § 14, p. 976; am. 2018, ch. 118, § 2, p. 250.

STATUTORY NOTES

Amendments.

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 243, § 2, changed reference from “**section 67-5309(m), Idaho Code**” to “**section 67-5309(n), Idaho Code**” in subsection (4).

The 1999 amendment, by ch. 370, § 14, in subdivision 1(c), substituted “administrator of the division of human resources or the staff of the division of human resources” for “state personnel director or staff of the Idaho personnel commission”; inserted “personnel” in subdivision 1(d); and, in subsection (2) substituted “administrator” for “personnel commission director or staff.”

The 2018 amendment, by ch. 118, updated the statutory reference in the first sentence in subsection (4) in light of the 2018 amendment of section 67-5309.

Compiler’s Notes.

The term “this act”, in the first sentence in subsection (5), refers to S.L. 1965, Chapter 289, which is codified as §§ 67-5301 to 67-5303, 67-5304 to

67-5309, and 67-5310 to 67-5314. The reference probably should be to “this chapter,” meaning chapter 53, title 67, Idaho Code.

Effective Dates.

Section 4 of S.L. 1969, ch. 171 declared an emergency. Approved March 18, 1969.

CASE NOTES

Attorney’s fees.

Authority of district court.

Burden of proof.

Commission’s decision.

Exclusion of evidence.

Exhaustion of administrative remedies.

Failure to follow procedures.

Hearing officer’s decision.

— Appeal.

Involuntary transfer.

Performance evaluation.

Prejudgment interest.

Reinstatement.

Review procedures.

Substantial evidence.

Attorney’s Fees.

Subsection (4) specifically mentioned reinstatement, with or without loss of pay; nothing would lead to the conclusion that legislature also intended to include an award of attorney fees as a possible other remedy; a fair reading of the statute led to the conclusion that the employee was not entitled to an award of attorney fees. *Sanchez v. State*, 143 Idaho 239, 141 P.3d 1108 (2006).

Authority of District Court.

Not only does this section vest in the personnel commission the initial determination whether back pay shall be awarded to an employee who has been erroneously discharged, it restricts the district court's appellate authority to affirming or setting aside an order or remanding to the commission and makes no provision for a district court to take additional evidence or modify the judgment. *Swisher v. State Dep't of Env'tl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977).

Where a district court held that the commission's ruling affirming an employee's discharge was erroneous and ordered his reinstatement, the court had no authority to reserve judgment on the issue of back pay until evidence could be taken on the issue. *Swisher v. State Dep't of Env'tl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977) (decision prior to the 1986 amendment).

Burden of Proof.

Proceedings before the personnel commission are de novo, and, in an employee discharge action, an agency bears the burden of persuading the commission that employee misconduct had occurred. *Department of Health & Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987) (decision prior to the 1986 amendment).

Transportation department had a threshold burden to prove, by a preponderance of the evidence, that claimant's layoff was for a permissible purpose, such as reorganization; but once the department had made a prima facie showing of a legitimate layoff, claimant had a burden of going forward with evidence to show that the basis for his layoff was retaliation for his testimony at a grievance hearing of a fellow employee. *Starr v. Idaho Transp. Dep't*, 118 Idaho 127, 795 P.2d 21 (Ct. App. 1990).

Commission's Decision.

The full personnel commission's decision and order is the final agency action to which the district court should direct its attention; the district court's function is to review the decision of the commission in order to determine whether to affirm or set aside such order or remand the matter to the commission. *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1985) (decision prior to the 1986 amendment).

The statutory mandate of the court of appeals is to review the final decision of the personnel commission, not the decision proposed by the hearing officer. *Department of Health & Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987) (decision prior to the 1986 amendment).

Exclusion of Evidence.

A hearing officer properly excluded evidence of a worker's performance in a different department and at another job as this evidence was irrelevant to the worker's job performance at the particular job from which he was discharged. *Soong v. Idaho Dep't of Health & Welfare*, 132 Idaho 166, 968 P.2d 261 (Ct. App. 1998).

Exhaustion of Administrative Remedies.

Where, in order to prevent being discharged entirely, an administrative agency employee asserted his seniority rights and voluntarily elected a reduction from grade 34 step G, to grade 33 step D, the agency's action was either a "discharge" caused by the program elimination or reduced funding by the legislature, or a reduction in rank or grade; accordingly, an appeal should have been taken to the Idaho personnel commission. Therefore, since the employee failed to exhaust his administrative remedies, the district court correctly dismissed the complaint. *Service Employees Int'l Local 6 v. Idaho Dep't of Health & Welfare*, 106 Idaho 756, 683 P.2d 404 (1984) (decision prior to the 1986 amendment).

Where terminated employee failed to show that justice required relaxation of the exhaustion rule or that the department of law enforcement acted outside its authority, the general rule of exhaustion of administrative remedies applied; therefore, the district court correctly dismissed former employee's claims for failure to exhaust administrative remedies. *Arnzen v. State*, 123 Idaho 899, 854 P.2d 242 (1993).

Failure to Follow Procedures.

Where a department of health and welfare employee brought an action arguing that the proposed reorganization of the department violated personnel commission regulations and Idaho statutory law governing state employees, the trial court properly granted the department's motion to dismiss, since the employee should have taken the matter up through the appeal procedure set out in this chapter. *Service Employees Int'l Local 6 v.*

Idaho Dep't of Health & Welfare, 106 Idaho 756, 683 P.2d 404 (1984) (decision prior to the 1986 amendment).

Hearing Officer's Decision.

— Appeal.

When employee did not appeal the decision of the personnel commission, the decision of the personnel commission. Where he did not do so, the decision of the personnel commission became final and the doctrine of res judicata applied to bar his claim for wrongful discharge. *Henderson v. State*, 110 Idaho 308, 715 P.2d 978, cert. denied, 477 U.S. 907, 106 S. Ct. 3282, 91 L. Ed. 2d 571 (1986) (decision prior to the 1986 amendment).

Upon an employee's appeal of the hearing officer's decision, the personnel commission is entitled to review the record de novo, and the new decision of the commission effectively displaces the proposed decision of the hearing officer. *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1985) (decision prior to the 1986 amendment).

The judgment dismissing the appeal was affirmed because this chapter does not allow for an appeal of a hearing officer's intermediate orders and the administrative code could not be used to supplement this chapter's appellate procedures. *Stacey v. Idaho Dep't of Labor*, 134 Idaho 727, 9 P.3d 530 (2000), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

Involuntary Transfer.

The protections of subsection (1) should not be avoided simply by the department cloaking disciplinary action under the rubric of an involuntary transfer; therefore, remand was necessary where the record was ambiguous about whether plaintiff's transfer was strictly for administrative purposes or constituted disciplinary action. *Sanchez v. Idaho Dep't of Cor.*, 134 Idaho 523, 5 P.3d 984 (2000).

Performance Evaluation.

The state personnel commission lacked jurisdiction to hear an employee's appeal of a performance evaluation grievance, under provisions of § 67-5315 and this section specifically limiting the types of appeals to be

decided. *Sheets v. Idaho Dep't of Health & Welfare*, 114 Idaho 111, 753 P.2d 1257 (1988) (decision prior to the 1986 amendment).

Prejudgment Interest.

Section 28-22-104 did not overcome the presumption of the state's sovereign immunity, and subsection (4) of this section spoke only of "pay" and made no mention of interest; this language did not qualify as a clear waiver of sovereign immunity; therefore, there was no basis for an award of prejudgment interest to the employee against the Idaho department of correction. *Sanchez v. State*, 143 Idaho 239, 141 P.3d 1108 (2006).

Reinstatement.

By definition, the personnel commission's findings of fact that proper cause to discharge the employee did not exist as a matter of law supported its determination that the employee was to be reinstated. *Idaho State Ins. Fund v. Hunnicutt*, 110 Idaho 257, 715 P.2d 927 (1985) (decision prior to the 1986 amendment).

Dismissal of corrections officer was reversed and his reinstatement ordered where the agency failed to prove, by a preponderance of the evidence, that the officer had violated the particular policies of the corrections facility, as identified by the facility itself. *Idaho Dep't of Corr. v. Anderson*, 134 Idaho 680, 8 P.3d 675 (Ct. App. 2000).

Review Procedures.

An employee aggrieved by a decision at the department level has two avenues available for review. First, if the matter is not reviewable by the personnel commission pursuant to this section, the employee may seek judicial review under the administrative procedure act within 30 days of the completion of the grievance procedure in the department. Second, if the matter is reviewable by the personnel commission pursuant to this section, the employee may appeal to the commission within 30 days (now 35 days) of the completion of the department's grievance procedure. *Pounds v. Denison*, 115 Idaho 381, 766 P.2d 1262 (Ct. App. 1988) (decided prior to 1986 amendment).

Substantial Evidence.

Where conflicting testimony could support findings that an employee was discharged for cause as well as findings that he was not, the commission's findings that he was discharged for cause were based upon substantial, competent evidence and it was error for the district court to order his reinstatement. *Swisher v. State Dep't of Env'tl. & Community Servs.*, 98 Idaho 565, 569 P.2d 910 (1977) (decision prior to the 1986 amendment).

A judge must decide whether the agency's findings of fact are "reasonable," and in arriving at this conclusion, the judge should determine whether the evidence supporting the agency decision is substantial when viewed in the light of the entire record, including the body of evidence opposed to the agency's view. *Department of Health & Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987) (decision prior to the 1986 amendment).

Cited *Ashley v. Department of Health & Welfare*, 108 Idaho 1, 696 P.2d 353 (Ct. App. 1985); *Stroud v. Department of Labor & Indus. Servs.*, 112 Idaho 891, 736 P.2d 1345 (Ct. App. 1987); *Horne v. Idaho State Univ.*, 138 Idaho 700, 69 P.3d 120 (2003).

§ 67-5317. Petition for review procedure. — (1) If a petition for review is filed, the personnel commission shall review the record of the proceeding before the hearing officer, briefs submitted in accordance with any briefing schedule it orders, and any transcripts submitted of the hearing below. The commission may grant the parties the opportunity to present oral argument, but need not do so if the record clearly shows that the commission or the hearing officer lacks jurisdiction over the appeal or petition for review. The personnel commission may affirm, reverse or modify the decision of the hearing officer, may remand the matter, or may dismiss it for lack of jurisdiction.

(2) Any party in interest may file in the district court for the county in which any party to the proceedings resides, a certified copy of the decision of the commission, which the district court shall have the power to enforce by proper proceedings.

(3) A decision of the commission shall be final and conclusive between the parties, unless within forty-two (42) days of the filing of such decision either party appeals to the district court. Where the decision of the personnel commission directed the reinstatement of an employee, the employee shall be reinstated upon receipt of a copy of the decision unless a stay of the order be granted by the district court upon proper petition.

History.

I.C., § 67-5317, as added by 1986, ch. 134, § 6, p. 355; am. 1999, ch. 370, § 15, p. 976.

STATUTORY NOTES

Prior Laws.

Former § 67-5317, which comprised **I.C., § 67-5317**, as added by 1975, ch. 164, § 7, p. 434; am. 1977, ch. 313, § 1, p. 887, was repealed by S.L. 1986, ch. 134, § 5.

Another former § 67-5317, which comprised S.L. 1969, ch. 176, § 1, was repealed by S.L. 1971, ch. 327, § 15.

CASE NOTES

Attorney's fees.

District court defined.

Jurisdiction.

Attorney's Fees.

In the instant appeal, it was clear that this chapter provided for an appeal to the district court of the county in which any party to the proceeding resided; the record was clear that employee resided in Valley County; under these unique circumstances the district court in and for Valley County was a proper "district court" in which to file a notice of appeal. In clear, unambiguous and mandatory language, § 12-117 requires an award of reasonable attorney fees merely upon a showing "that the agency acted without reasonable basis in fact or law;" notwithstanding the state was defending a favorable judgment of the district court, the motion to dismiss for lack of jurisdiction was made without a reasonable basis in law or fact and employee is entitled to an award of attorney fees. *Lockhart v. Department of Fish & Game*, 121 Idaho 894, 828 P.2d 1299 (1992).

Attorney fees were not awarded where it could not be shown that the parties acted without a reasonable basis in fact or law. *Stacey v. Idaho Dep't of Labor*, 134 Idaho 727, 9 P.3d 530 (2000), overruled on other grounds, *City of Osburn v. Randel*, 152 Idaho 906, 277 P.3d 353 (2012).

District Court Defined.

Given the legislature's intent that this chapter provide the exclusive means whereby classified employees of the state of Idaho shall be examined, selected, retained and promoted, and the fact that the 1986 amendments to the PSA removed all references to the appeal procedures of the Administrative Procedure Act (APA), the department of fish and game's suggestion that the APA is needed to fill a perceived gap or void was rejected. *Lockhart v. Department of Fish & Game*, 121 Idaho 894, 828 P.2d 1299 (1992).

Jurisdiction.

In this case it was undisputed that at the time employee was initially subjected to disciplinary action he resided in Valley County; inasmuch as he filed his notice of appeal with the district court in and for Valley County, there was no procedural violation and the district court erred in dismissing the appeal for lack of jurisdiction. *Lockhart v. Department of Fish & Game*, 121 Idaho 894, 828 P.2d 1299 (1992).

In an employment termination case, where there was nothing in the record indicating when the administrative decision was filed as there was no filing stamp on the document, the employer did not show that the employee's appeal was not timely filed, and therefore, the appellate court had jurisdiction. *Horne v. Idaho State Univ.*, 138 Idaho 700, 69 P.3d 120 (2003).

Cited *Department of Health & Welfare v. Sandoval*, 113 Idaho 186, 742 P.2d 992 (Ct. App. 1987); *Starr v. Idaho Transp. Dep't*, 118 Idaho 127, 795 P.2d 21 (Ct. App. 1990); *Idaho Dep't of Corr. v. Anderson*, 134 Idaho 680, 8 P.3d 675 (Ct. App. 2000).

§ 67-5318. Appeal to district court. — Upon the appeal of a decision of the commission, the district court may affirm, or set aside and remand the matter to the commission upon the following grounds, and shall not set the same aside on any other grounds:

(1) That the findings of fact are not based on any substantial, competent evidence; (2) That the commission has acted without jurisdiction or in excess of its powers; (3) That the findings of fact by the commission do not as a matter of law support the decision.

History.

I.C., § 67-5318, as added by 1986, ch. 134, § 7, p. 355.

STATUTORY NOTES

Prior Laws.

A former § 67-5318 which comprised S.L. 1969, ch. 176, § 2, p. 530 was repealed by S.L. 1971, ch. 327, § 15.

CASE NOTES

Order upheld.

Standard of review.

Order Upheld.

The Idaho personnel commission's (IPC) order terminating an employee was proper where the employee was notified in writing of the reasons for dismissal, the employee was provided with a job description and was evaluated on several occasions based on the job description, and there was substantial and competent evidence supporting the IPC's determination that the employee was terminated because his performance was unsatisfactory when evaluated in light of his job description and the clinical expectations based on the job description. *Soong v. Idaho Dep't of Health & Welfare*, 132 Idaho 166, 968 P.2d 261 (Ct. App. 1998).

Decision of the personnel commission was upheld and dismissal of corrections officer was reversed and his reinstatement ordered where the agency failed to prove, by a preponderance of the evidence, that the officer had violated the particular policies of the corrections facility, as identified by the facility. *Idaho Dep't of Corr. v. Anderson*, 134 Idaho 680, 8 P.3d 675 (Ct. App. 2000).

An appellate court properly affirmed an employee's employment termination where an agency did not err in its findings of fact by failing to adopt the employee's version of events, nor did it exhibit bias, where the employee became upset during a meeting with a supervisor and left the meeting without permission. *Horne v. Idaho State Univ.*, 138 Idaho 700, 69 P.3d 120 (2003).

Standard of Review.

The applicable standard for a district court's review of a personnel commission decision is as provided in this section; this same standard of review applies when the court of appeals examines the commission's decisions. *Lockhart v. State, Dep't of Fish & Game*, 127 Idaho 546, 903 P.2d 135 (Ct. App. 1995).

Where the petitioner did not challenge the personnel commission's findings of fact, review was limited to whether the commission acted in excess of its powers. *Fridenstine v. Idaho Dep't of Admin.*, 133 Idaho 188, 983 P.2d 842 (1999).

Cited *Starr v. Idaho Transp. Dep't*, 118 Idaho 127, 795 P.2d 21 (Ct. App. 1990); *Sanchez v. Idaho Dep't of Cor.*, 134 Idaho 523, 5 P.3d 984 (2000); *Sanchez v. State*, 143 Idaho 239, 141 P.3d 1108 (2006).

§ 67-5319 — 67-5325. Hours of work — Overtime. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised S.L. 1969, ch. 176, §§ 3-9, p. 530; 1970, ch. 260, § 1, p. 696, were repealed by S.L. 1971, ch. 327, § 15.

§ 67-5326. Hours of work — State policy — Overtime. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1971, ch. 327, § 1, p. 1289; am. 1972, ch. 326, § 2, p. 806; am. 1977, ch. 307, § 6, p. 856, was repealed by S.L. 2006, ch. 380, § 16.

§ 67-5327. Definitions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section which comprised 1971, ch. 327, § 2, p. 1289; am. 1973, ch. 16, § 2, p. 32; am. 1975, ch. 164, § 8, p. 434 was repealed by S.L. 1977, ch. 307, § 15.

§ 67-5328. Hours of work and overtime. — (1) It is hereby declared to be the policy of the legislature of the state of Idaho that all classified employees shall be treated substantially similar with reference to hours of employment. The policy of this state as declared in this act shall not restrict the extension of regular work hour schedules on an overtime basis in those activities and duties where such extension is necessary and authorized, provided that overtime work performed under such extension is compensated for as hereinafter provided.

(2) The appointing authority of any department shall determine the necessity for overtime work and shall provide for cash compensation or compensatory time off for such overtime work for eligible classified officers and employees, subject to the restrictions of applicable federal law.

(3) Cash for overtime and compensatory time shall be paid based on the following criteria:

(a) Classified and nonclassified officers and employees who fall within one (1) or more of the following categories are ineligible for cash compensation or compensatory time for overtime work:

(i) Elected officials; or

(ii) Those included in the definition of [section 67-5303\(j\), Idaho Code](#).

(b) Classified and nonclassified employees who are designated as executive, as provided in [section 67-5302, Idaho Code](#), and who are not included in the definition of subsection (3)(a) of this section, shall be ineligible for compensatory time or cash compensation for overtime work. Such salaried employees shall report absences in excess of one-half (1/2) day. Unused compensatory time balances in excess of two hundred forty (240) hours as of the date of enactment of this act shall be forfeited on December 31, 2008. Unused compensatory time balances of two hundred forty (240) hours or less shall be forfeited on December 31, 2006. Employees who become executives within their current agency as set forth in [section 67-5302\(12\), Idaho Code](#), shall have twelve (12) months from the date of this act or of appointment, whichever is later, to use any compensatory time balance. After twelve (12) months, any

remaining compensatory time will be forfeited. Compensatory time is not transferable, and shall be forfeited at the time of transfer to another appointing authority or upon separation from state service.

(c) Classified and nonclassified employees who are designated as administrative or professional, as provided in the federal fair labor standards act, [29 U.S.C. section 201, et seq.](#), or who are designated as exempt under any other complete exemption in federal law, and who are not included in the definition of either subsection (3)(a) or (3)(b) of this section, shall be ineligible for cash compensation for overtime work unless cash payment is authorized by the state board of examiners for overtime accumulated during unusual or emergency situations, but such classified and nonclassified employees shall be allowed compensatory time off from duty for overtime work. Such compensatory time shall be earned and allowed on a one (1) hour for one (1) hour basis, shall not be transferable, and shall be forfeited at the time of transfer to another appointing authority or upon separation from state service. Compensatory time may be accrued and accumulated up to a maximum of two hundred forty (240) hours. Effective with the first pay period in July, 2008 (beginning date June 15, 2008), compensatory time balances in excess of two hundred forty (240) hours will not continue to accrue until the balance is below the maximum. After the last pay period in June, 2009 (ending date June 13, 2009), balances in excess of two hundred forty (240) hours shall be forfeited.

(d) Classified employees who are not designated as executive, administrative or professional as provided in this section, and who are not included in the definition of subsection (3)(a) of this section or who are not designated as exempt under any other complete exemption in federal law, shall be eligible for cash compensation or compensatory time off from duty for overtime work, subject to the restrictions of applicable federal law. Compensatory time off may be provided in lieu of cash compensation at the discretion of the appointing authority after consultation, in advance, with the employee. Compensatory time off shall be paid at the rate of one and one-half (1 1/2) hours for each overtime hour worked. Compensatory time off which has been earned during any one-half (1/2) fiscal year but not taken by the end of the succeeding one-half (1/2) fiscal year, shall be paid in cash on the first payroll following

the close of such succeeding one-half (1/2) fiscal year. Compensatory time not taken at the time of transfer to another appointing authority or upon separation from state service shall be liquidated at the time of such transfer or separation by payment in cash.

(e) Notwithstanding the provisions of this section, employees may be paid for overtime work during a disaster or emergency with the approval of the board of examiners.

(4) Cash compensation for overtime, when paid, shall be at one and one-half (1 1/2) times the hourly rate of that officer's or employee's salary or wage, except for those employees whose positions fall within the definitions of executive, administrative or professional as stated in [section 67-5302, Idaho Code](#), who will be paid at their regular hourly rate of pay as provided for in subsection (3) of this section.

(5) Except as provided for in subsection (3) of this section, compensation for authorized overtime work shall be made at the completion of the pay period next following the pay period in which the overtime work occurred and shall be added to the regular salary payment.

History.

1971, ch. 327, § 3, p. 1289; am. 1977, ch. 307, § 7, p. 856; am. 1986, ch. 133, § 6, p. 341; am. 2006, ch. 380, § 17, p. 1175; am. 2008, ch. 196, § 3, p. 623.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Amendments.

The 2006 amendment, by ch. 380, combined former §§ 67-5328, 67-5329, 67-5330 and 67-5331 as this section; substituted "Hours of work and overtime" for "Overtime compensation — Eligibility" in the section heading; added subsection (1); designated former § 67-5328 as subsection (2); designated former § 67-5329 as subsection (3); added "Cash for overtime and compensatory time shall be paid based on the following criteria:" in subsection (3); rewrote subsections (3)(b), which defined

compensatory time off requirements for executive employees; in subsection (3)(c) and (d), updated section references; designated former § 67-5330 as subsection (4) and former § 67-5331 as subsection (5); and, in subsections (4) and (5), updated section references.

The 2008 amendment, by ch. 196, added the last two sentences in paragraph (3)(b); in paragraph (3)(c), inserted “[29 U.S.C. section 201, et seq.](#), or who are designated as exempt under any other complete exemption in federal law” in the first sentence and added the last three sentences; in paragraph (3)(d), inserted “or who are not designated as exempt under any other complete examination in federal law” in the first sentence; and added paragraph (3)(e).

Compiler’s Notes.

The term “this act” in the second sentence in subsection (1) refers to S.L. 2006, Chapter 380, which is compiled as §§ 33-2101A, 33-2109A, 59-1603, 59-1606, 59-1607, 67-3511, 67-5302, 67-5309 to 67-5309D, 67-5328, 67-5333, 67-5334, 67-5337, and 67-5342.

The phrase “the date of enactment of this act” in the third sentence in paragraph (3)(b) refers to the date of the enactment of S.L. 2006, Chapter 380, which became effective on July 1, 2006.

The phrase “the date of this act” in the fourth sentence in paragraph (3)(b) refers to the effective date of S.L. 2008, Chapter 196, which was effective July 1, 2008.

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

Idaho Law Review. — Idaho vs FLSA: Department of Corrections Must Change to Comply with Federal Law, Comment. 52 Idaho L. Rev. 975 (2016).

§ 67-5329. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-5329 has been amended and redesignated as § 67-5328(3), pursuant to S.L. 2006, ch. 380, § 17.

§ 67-5330. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-5330 has been amended and redesignated as § 67-5328(4), pursuant to S.L. 2006, ch. 380, § 17.

§ 67-5331. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-5331 has been amended and redesignated as § 67-5328(5), pursuant to S.L. 2006, ch. 380, § 17.

§ 67-5332. Credited state service — Applicability — Computation. —

(1) For the purposes of payroll, vacation or annual leave, sick leave and other applicable purposes, credited state service shall be earned by:

(a) Classified officers and employees of any department, commission, division, agency or board of the executive department;

(b) Such other classified officers and employees as may be prescribed by law or by order of the state board of examiners.

(2) Service in the employ of any of the following units of government, or other similar units, shall not earn credited state service: counties, cities, school districts, community college districts, irrigation districts and highway districts. Service as an independent contractor or consultant is not state service.

(3) One (1) hour of credited state service shall be earned by each eligible state officer or employee for each hour, or major fraction thereof, worked or on approved leave as provided in subsection (4) of this section.

(4) Credited state service shall be earned when on approved leave with pay, on approved vacation leave, approved military leave, on approved sick leave, and holiday leave, but not when compensatory time or earned administrative leave is taken.

(5) Service for retirement purposes shall be as provided in chapter 13, title 59, Idaho Code.

History.

I.C., § 67-5332, as added by 1977, ch. 307, § 10, p. 856; am. 1979, ch. 197, § 2, p. 568; am. 1981, ch. 133, § 6, p. 221; am. 1988, ch. 85, § 1, p. 169; am. 1999, ch. 243, § 3, p. 616; am. 2000, ch. 121, § 2, p. 262.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Prior Laws.

Former section 67-5332 which comprised S.L. 1971, ch. 327, § 7, p. 1289; 1972, ch. 326, § 3, p. 806 was repealed by S.L. 1975, ch. 164, § 11.

§ 67-5333. Sick leave. — (1) Sick leave shall be computed as follows:

(a) The rate per hour at which sick leave shall accrue to classified officers and employees earning credited state service shall be at the rate represented by the proportion 96/2080. Sick leave shall accrue without limit and shall be transferable from department to department.

(b) Sick leave shall not accrue to any officer or employee on any kind of leave of absence without pay, suspension without pay or layoff. Sick leave shall accrue while an officer or employee is on approved leave with pay, on approved vacation leave, on approved military leave with pay, and on approved sick leave, but not when compensatory time is taken.

(c) All accrued sick leave shall be forfeited at the time of separation from state service and no officer or employee shall be reimbursed for accrued sick leave at the time of separation, except as provided in subsection (2) of this section. If such officer or employee returns to credited state service within three (3) years of such separation, all sick leave credits accrued at the time of separation shall be reinstated, except to the extent that unused sick leave was utilized for the purposes specified in subsection (2) of this section or transferred to a school district or charter district pursuant to [section 33-1217, Idaho Code](#).

(d) Sick leave shall be taken on a workday basis. Regularly scheduled days off and officially designated holidays falling within a period of sick leave shall not be counted against sick leave. Sick leave shall not be taken in advance of being earned and shall only be taken in pay periods subsequent to being earned.

(e) In cases where absences for sick leave exceed three (3) consecutive working days, the appointing authority may require verification by a physician or other authorized practitioner.

(f) If an absence for illness or injury extends beyond the sick leave accrued to the credit of the officer or employee, the officer or employee may be granted leave without pay.

(g) The administrator shall prescribe additional requirements for sick leave for classified officers and employees on a part-time or irregular

schedule, for maintaining sick leave records, for funeral leave and such other applicable purposes as necessary.

(2) Unused sick leave may be used as follows:

(a) Upon separation from state employment by retirement in accordance with chapter 13, title 59, or chapter 1, title 33, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 1976, and shall be reported by the employer to the public employee retirement system. Upon separation from state employment by retirement in accordance with chapter 20, title 1, Idaho Code, an employee's unused sick leave shall be determined based on accumulated sick leave earned subsequent to July 1, 2000, and shall be reported by the employer to the public employee retirement system. A sum equal to one-half (1/2), or the maximum amount allowed by paragraph (b) of this subsection, whichever is the lesser, of the monetary value of such unused sick leave, calculated at the rate of pay for such employee at the time of retirement, as determined by the retirement board, shall be transferred from the sick leave account provided by paragraph (c) of this subsection and shall be credited to such employee's retirement account. Such sums shall be used by the Idaho public employee retirement board to pay premiums, as permitted by and subject to applicable federal tax laws and limits, for such health, dental, vision, long-term care, prescription drug and life insurance programs as may be maintained by the state, to the extent of the funds credited to the employee's account pursuant to this section. Upon an employee's death, any unexpended sums remaining in the account shall revert to the sick leave account.

(b) For the purposes of determining the monetary value of unused sick leave, the maximum unused sick leave which may be considered shall be:

(i) During the first ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be four hundred twenty (420) hours;

(ii) During the second ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be four hundred eighty (480) hours;

- (iii) During the third ten thousand four hundred (10,400) hours of credited state service, the maximum unused sick leave which may be considered shall be five hundred forty (540) hours;
 - (iv) Thereafter, the maximum unused sick leave which may be considered shall be six hundred (600) hours; and
 - (v) For any employees of a state educational agency with unused sick leave that includes sick leave credited pursuant to [section 33-1217, Idaho Code](#), the credited state service requirements of subsection (2)(b)(i) through (iv) of this section shall not apply, but the maximum unused sick leave which may be considered shall be six hundred (600) hours.
- (c) Each employer in state government shall contribute to a sick leave account maintained by the public employee retirement system in trust exclusively for the purpose of the provisions of this section. The retirement board shall serve as trustee of the trust and shall be indemnified to the same extent as provided in [section 59-1305, Idaho Code](#). Assets in the trust shall not be assignable or subject to execution, garnishment or attachment or to the operation of any bankruptcy or insolvency law. The rate of such contribution each pay period shall consist of a percentage of employees' salaries as determined by the board and such rate shall remain in effect until next determined by the board. Any excess balance in the sick leave account shall be invested, and the earnings therefrom shall accrue to the sick leave account except the amount required by the board to defray administrative expenses. Assets of the trust may be commingled for investment purposes with other assets managed by the retirement board. All moneys payable to the sick leave account are hereby perpetually appropriated to the board and shall not be included in its departmental budget. The state insurance fund and public health districts shall be considered employers in state government for purposes of participation under this section.

History.

[I.C., § 67-5333](#), as added by 1977, ch. 307, § 11, p. 856; am. 1981, ch. 133, § 7, p. 221; am. 1999, ch. 243, § 4, p. 616; am. 1999, ch. 370, § 16, p. 976; am. 2000, ch. 121, § 3, p. 262; am. 2006, ch. 150, § 2, p. 463; 2006,

ch. 380, § 18, p. 1175; am. 2007, ch. 78, § 2, p. 205; am. 2008, ch. 196, § 4, p. 625; am. 2009, ch. 164, § 1, p. 492; am. 2014, ch. 238, § 2, p. 600.

STATUTORY NOTES

Cross References.

Public employees retirement system, § 59-1301 et seq.

Retirement board, § 59-1304.

State insurance fund, § 72-901 et seq.

Prior Laws.

Former § 67-5333, which comprised S.L. 1971, ch. 327, § 8, p. 1289, was repealed by S.L. 1975, ch. 164, § 11.

Amendments.

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 243, § 4, deleted “, or when working overtime” at the end of subsection (2).

The 1999 amendment, by ch. 370, § 16, substituted “administrator” for “personnel commission” near the beginning of subsection (7).

The 2000 amendment, by ch. 385, § 10, inserted the second sentence in subsection (1).

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 150, in subsection (2)(a), inserted “as determined by the retirement board” in the middle of the third sentence, and inserted “subject to applicable federal tax limits” and substituted “dental, vision, long-term care, prescription drug” for “accident” in the fourth sentence.

The 2006 amendment, by ch. 380, combined former §§ 67-5333 and 67-5339, as this section; deleted “Computation” from the end of the section heading; redesignated former § 67-5333 as subsection (1); inserted “sick leave shall be computed as follows:” at the beginning of subsection (1);

redesignated former § 67-5339 as subsections (2) and (3); added “Unused sick leave may be used as follows:” in subsection (2); and updated section references throughout the section.

The 2007 amendment, by ch. 78, in subsection (2)(c), inserted “in trust” in the first sentence, and added the second, third, and sixth sentences.

The 2008 amendment, by ch. 196, in the last sentence in paragraph (1)(b), deleted “or earned administrative leave” following “compensatory time”; and at the end of paragraph (1)(d), added “and shall only be taken in pay periods subsequent to being earned.”

The 2009 amendment, by ch. 164, in the next-to-last sentence in subsection (2)(a), inserted “as permitted by and” and “laws and” and deleted “group” preceding “health.”

The 2014 amendment, by ch. 238, added “or transferred to a school district or charter district pursuant to [section 33-1217, Idaho Code](#)” at the end the last sentence in paragraph (1)(c) and added paragraph (2)(b)(v).

Compiler’s Notes.

Section 10 of S.L. 2000, ch. 385, amended the S.L. 1999, ch. 138 amendment to this section. However, S.L. 1999, ch. 138, was repealed by S.L. 2000, ch. 127, § 2, but since the amendment by S.L. 2000, ch. 385 did not affect the same language of the section as the 1999, ch. 138 amendment, the amendment by S.L. 2000, ch. 385 has been made effective to reflect the intention of the legislature.

Effective Dates.

Section 3 of S.L. 2000, ch. 127 provided that the act shall be in full force and effect on and after July 1, 2000.

Section 3 of S.L. 2009, ch. 164 declared an emergency. Approved April 14, 2009.

OPINIONS OF ATTORNEY GENERAL

Sick Leave Plan.

This state met the sick pay exclusion requirements of [42 U.S.C. § 409](#) and [20 C.F.R. 404.1051A](#) for the period January 1, 1978, through December

31, 1981, where the state had legal authority to make payments on account of sickness, the state exercised this authority in accordance with state law by statutorily and administratively establishing and implementing a mandatory sick leave plan for classified and nonclassified eligible employees, and payments were made on account of sickness pursuant to the sick leave statutes providing benefits in addition to separately defined salary benefits, rather than pursuant to salary statutes which provide merely for continuation of salary during illnesses. OAG 86-3.

§ 67-5333A. Sick leave transferred — Public education entity and state educational agency. — Any employee who becomes an eligible employee of a state educational agency immediately following termination of employment with a public education entity shall be credited by the state of Idaho with the amount of any unused sick leave previously accrued upon commencement of state educational agency employment. Any employee who becomes an eligible employee of a public education entity immediately following termination of state educational agency employment shall be credited by the public education entity with the amount of sick leave accrued upon commencement of public education entity employment. After such transfer, the use of sick leave shall be governed by the laws, rules and policies applicable to the state educational agency or public education entity thereafter employing such employee.

History.

I.C., § 67-5333A, as added by 2012, ch. 138, § 1, p. 365; am. 2016, ch. 199, § 2, p. 556.

STATUTORY NOTES

Prior Laws.

Former § 67-5333A, Sick leave transferred — Boise State University — College of Western Idaho, became null and void, pursuant to section 3 of S.L. 2009, ch. 22, effective September 2, 2009.

Amendments.

The 2016 amendment, by ch. 199, substituted “State educational agency” for “Community colleges § State employment” in the section heading; rewrote the first sentence, which formerly read: “Notwithstanding any other provision of law to the contrary, any employee who has accrued sick leave while in the employment of one (1) of Idaho’s community colleges and who, on or after January 1, 2012, is transferred to or otherwise becomes an eligible employee of a state of Idaho educational agency immediately following termination of employment with a community college shall be credited by the state of Idaho with the amount of sick leave accrued and

unused, up to a maximum of ninety (90) days, upon commencement of state employment”; added the second sentence; and substituted “state educational agency of public education entity” for “state agency or entity” in the last sentence.

Effective Dates.

Section 3 of S.L. 2012, ch. 138 declared an emergency. Approved March 27, 2012.

§ 67-5333B. Sick leave transferred — Former employees of Seland college of applied technology at Boise state university — State employment. — Notwithstanding any other provision of law to the contrary, any former employee of Seland college of applied technology at Boise state university (BSU) whose sick leave accumulated at BSU and was transferred to the college of western Idaho (CWI) pursuant to section 33-2109B, Idaho Code, and who, on or before September 1, 2012, was transferred to or otherwise became an eligible employee of the state of Idaho immediately following termination of employment with CWI shall be credited by the state of Idaho with the amount of sick leave transferred to CWI from BSU that remains unused, upon commencement of state employment. After such transfer, the use of sick leave shall be governed by the laws and rules applicable to state employees and by any applicable policies of the state agency or entity thereafter employing such employee.

History.

I.C., § 67-5333B, as added by 2012, ch. 138, § 2, p. 365.

STATUTORY NOTES

Compiler's Notes.

Section 33-2109B, referred to in this section, was enacted by S.L. 2000, ch. 22, § 1 and became null and void on September 2, 2009, pursuant to S.L. 2009, ch. 22, § 3.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 3 of S.L. 2012, ch. 138 declared an emergency. Approved March 27, 2012.

§ 67-5334. Vacation time. — (1) Vacation time shall be computed as follows:

(a) Vacation time shall not accrue to any officer or employee on any kind of leave of absence without pay, suspension without pay or layoff. Vacation leave shall accrue while an officer or employee is on approved leave with pay, on approved vacation leave, on approved military leave with pay, and on approved sick leave, but not when compensatory time is taken.

(b) The rate per hour at which vacation leave shall accrue to eligible classified officers and employees earning credited state service who are covered and nonexempt under the federal fair labor standards act, [29 U.S.C. section 201, et seq.](#), shall be at the rate represented by the proportion 96/2080 during the first ten thousand four hundred (10,400) hours of credited state service; at the rate represented by the proportion 120/2080 during the second ten thousand four hundred (10,400) hours of credited state service; at the rate represented by the proportion 144/2080 during the third ten thousand four hundred (10,400) hours of credited state service; and at the rate represented by the proportion 168/2080 thereafter.

(c) Classified officers and employees earning credited state service and defined as an exempt “professional,” “administrative,” “computer worker” under the federal fair labor standards act, [29 U.S.C. section 201, et seq.](#), or who are designated as exempt under any other complete exemption in federal law shall be at the rate represented by the proportion 120/2080 during the first ten thousand four hundred (10,400) hours of credited state service; at the rate represented by the proportion 144/2080 during the second ten thousand four hundred (10,400) hours of credited state service; and at the rate represented by the proportion 168/2080 thereafter.

(d) Classified officers and employees earning credited state service and defined as an exempt “executive” under [section 67-5302, Idaho Code](#), shall be at the rate represented by the proportion 200/2080.

(2) Eligibility and use of vacation time shall be determined as follows:

(a) An appointing authority shall permit each officer or employee to take vacation leave to the extent such leave has accrued.

(b) Vacation leave may be accrued and accumulated only as follows, unless amounts in excess of the permitted accumulations have been expressly authorized in writing by the board of examiners during unusual or emergency situations:

During the first ten thousand four hundred (10,400) hours of credited state service, vacation leave may be accrued and accumulated to a maximum of one hundred ninety-two (192) hours; employees classified as “executive” under [section 67-5302, Idaho Code](#), may accrue and accumulate vacation leave to a maximum of two hundred (200) hours during this period;

During the second ten thousand four hundred (10,400) hours of credited state service, vacation leave may be accrued and accumulated to a maximum of two hundred forty (240) hours;

During the third ten thousand four hundred (10,400) hours of credited state service, vacation leave may be accrued and accumulated to a maximum of two hundred eighty-eight (288) hours;

After thirty-one thousand two hundred (31,200) hours of credited state service, vacation leave may be accrued and accumulated to a maximum of three hundred thirty-six (336) hours.

(c) Vacation leave shall be transferable from department to department only to the extent that it is accrued and accumulated.

(d) Vacation leave shall not be earned, accrued or accumulated during any pay period in which the maximum accruals and accumulations provided by this section have been met.

(e) Vacation leave not taken shall be compensated for at the time of separation only to the maximum accruals and accumulations allowed by this section.

(f) Vacation leave shall be taken on a workday basis. Regularly scheduled days off and officially designated holidays falling within a period of vacation leave shall not be counted against vacation leave. Vacation leave

shall not be taken in advance of being earned and shall only be taken in pay periods subsequent to being earned.

(g) With the approval of the appointing authority for both the transferring and receiving officer or employee, an officer or employee may transfer accrued vacation leave, up to a maximum of eighty (80) hours per fiscal year, to another officer or employee for purposes of sick leave in the event the receiving officer or employee or a family member suffers from a serious illness or injury. The amount transferred shall be converted to sick leave. An officer or employee shall not be allowed to receive more than one hundred sixty (160) hours of transferred leave per fiscal year, and a transfer shall not occur until the receiving employee has exhausted all of his or her accrued sick and vacation leave. An officer or employee shall not be eligible to transfer vacation leave unless his or her balance exceeds eighty (80) hours, and in no event may an officer or employee transfer an amount of accrued leave which would result in an accrued balance of less than eighty (80) hours.

(3) Upon separation from state employment and to the limits allowed by subsection (2) of this section, all classified officers and employees shall receive a lump sum payment for accrued but unused vacation leave at the hourly rate of pay of that officer or employee.

History.

1971, ch. 327, § 9, p. 1289; am. 1972, ch. 326, § 5, p. 806; am. 1977, ch. 307, § 12, p. 856; am. 1999, ch. 243, § 5, p. 616; am. 2000, ch. 121, § 4, p. 262; am. 2006, ch. 380, § 19, p. 1175; am. 2008, ch. 196, § 5, p. 627; am. 2010, ch. 72, § 1, p. 120.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Amendments.

The 2006 amendment, by ch. 380, combined former §§ 67-5334, 67-5335 and 67-5337, as this section; deleted “Computation” from the end of the section heading; redesignated former § 67-5334 as subsection (1); added

“Vacation time shall be computed as follows:” in subsection (1); added the (1)(a) and (1)(b) designations; inserted “who are covered and nonexempt under the federal fair labor standards act” in subsection (1)(b); added subsections (1)(c) and (1)(d); redesignated former § 67-5335 as subsection (2); added “Eligibility and use of vacation time shall be determined as follows:” in subsection (2); inserted “employees classified as ‘executive’ under [section 67-5302, Idaho Code](#), may accrue and accumulate vacation leave to a maximum of two hundred (200) hours during this period” in subsection (2)(b); redesignated former § 67-5337 as subsection (3); and updated the section reference in subsection (3).

The 2008 amendment, by ch. 196, in the last sentence in paragraph (1) (a), deleted “or earned administrative leave” following “compensatory time”; inserted the federal reference in paragraphs (1)(b) and (1)(c); and in paragraph (1)(c), inserted “or who are designated as exempt under any other complete exemption in federal law.”

The 2010 amendment, by ch. 72, substituted “eighty (80) hours” for “forty (40) hours” in the first sentence of paragraph (2)(g).

Effective Dates.

Section 2 of S.L. 2010, ch. 72 declared an emergency retroactively to January 1, 2010 and approved March 24, 2010.

§ 67-5335. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

Former § 67-5335 has been amended and redesignated as § 67-5334(2), pursuant to S.L. 2006, ch. 380, § 19.

**§ 67-5336. Paid holidays — Exemption from holiday work.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section which comprised 1971, ch. 327, § 11, p. 1289; am. 1972, ch. 326, § 7, p. 806; am. 1975, ch. 164, § 12, p. 434; am. 1976, ch. 195, § 1, p. 715 was repealed by S.L. 1977, ch. 307, § 15.

§ 67-5337. Moving expense reimbursement. — In order for the state to attract and retain professional staff, it may be necessary to defray normal intrastate and interstate moving expenses. The head of any department, office or institution of the state shall have the authority to decide whether or not to reimburse moving expenses for current or newly-hired state employees on a case-by-case basis up to ten percent (10%) of the employee's base salary or fifteen thousand dollars (\$15,000), whichever is less, and in compliance with rules for the reimbursement of moving expenses promulgated by the division of human resources. Exceptions to the maximum moving expense reimbursement may be granted if approved in advance by the department director. Agencies shall submit a report to the division of financial management and the legislative services office by October 1 on all moving expense reimbursements granted in the preceding fiscal year.

History.

I.C., § 67-5337, as added by 2006, ch. 380, § 20, p. 1175.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Legislative services office, § 67-701 et seq.

Compiler's Notes.

Former § 67-5337 has been amended and redesignated as § 67-5334(3), pursuant to S.L. 2006, ch. 380, § 19.

§ 67-5338. Red cross disaster services. — An employee of the state of Idaho, who is a certified disaster service volunteer, shall be granted paid leave for an aggregate of up to one hundred twenty (120) work hours, consecutively or nonconnectively, in any twelve (12) month period to participate in disaster relief services for the American red cross. Such leave shall be limited to services related to a disaster of level III, or higher, upon the declaration of the governor or the president of the United States, and shall be in the state of Idaho or a state contiguous to the state of Idaho. The request shall be in writing from an official of the American red cross for such employee's services. Leave for disaster services shall be in addition to other paid leave or vacation time provided to employees. Part-time employees shall be entitled to leave under this section based on the proportion they work of a forty (40) hour week.

History.

I.C., § 67-5338, as added by 2000, ch. 350, § 1, p. 1177.

STATUTORY NOTES

Prior Laws.

Former § 67-5338, which comprised 1971, ch. 327, § 13, p. 1289; am. 1972, ch. 326, § 9, p. 806, was repealed by S.L. 1981, ch. 133, § 9.

§ 67-5339. Loan repayment program. — (1) There is hereby created an educational loan repayment program for eligible physicians, psychologists and mid-level practitioners at state hospital north and state hospital south.

(2) For purposes of this section, the following definitions shall apply:

(a) “Mid-level practitioner” means a position at state hospital north or state hospital south that is licensed as a nurse practitioner pursuant to chapter 14, title 54, Idaho Code, or as a physician assistant pursuant to chapter 18, title 54, Idaho Code.

(b) “Physician” means a physician at state hospital north or state hospital south that is licensed to practice medicine pursuant to chapter 18, title 54, Idaho Code.

(c) “Psychologist” means a psychologist at state hospital north or state hospital south that is licensed to practice psychology pursuant to chapter 23, title 54, Idaho Code.

(3) The educational loan repayment program shall be subject to appropriation by the Idaho legislature.

(4) The educational loan repayment program shall be limited to the repayment of outstanding loans accrued prior to employment in a qualifying job class for undergraduate, graduate and medical school incurred by physicians, psychologists or mid-level practitioners who are eligible for the program under the provisions of this section.

(5) There is hereby created a state hospital governing body. The state hospital governing body shall have the responsibility to oversee the educational loan repayment program and the authority to offer loan repayment disbursements under the program and shall annually review each loan repayment agreement entered into pursuant to subsection (6) of this section and determine whether continuation of the loan repayment program for each participating employee shall occur based upon the number of program participants and the availability of funds. The state hospital governing body shall consist of the administrator of the division of behavioral health, the hospital administrator of state hospital south, the president of the medical staff at state hospital south and the hospital

administrator of state hospital north. The administrator of the division of behavioral health shall be the chair of the state hospital governing body.

(6) Employees eligible for loan repayment under the provisions of this section shall be required to enter into an agreement with the state hospital governing body each year a loan repayment disbursement is offered. The agreement shall include, but not be limited to, the following: (a) Disclosure of the employee's current student loan balance;

(b) Affirmation by the hospital that the employee has provided no less than two thousand eighty (2,080) credited state service hours prior to first disbursement and that the employee has obtained satisfactory performance standards during this time; (c) Affirmation that any subsequent disbursements occur one (1) year or two thousand eighty (2,080) credited state service hours after the previous disbursement and that the employee has obtained satisfactory performance standards during this time; and (d) Confirmation that any prior disbursements made under this program were used to pay outstanding student loans.

(7) Loan repayment disbursements made pursuant to this section shall be limited to a period of four (4) years.

(8) Loan repayment disbursements made pursuant to this section shall be made as follows:

(a) For physician reimbursements, a single yearly reimbursement may be made to or on behalf of an eligible physician not to exceed: (i) Fifteen thousand dollars (\$15,000) for the employee's first year of eligibility;

(ii) Fifteen thousand dollars (\$15,000) for the employee's second year of eligibility;

(iii) Twenty thousand dollars (\$20,000) for the employee's third year of eligibility; and (iv) Twenty-five thousand dollars (\$25,000) for the employee's fourth year of eligibility.

(b) For psychologist reimbursements, a single yearly reimbursement may be made to or on behalf of an eligible psychologist not to exceed: (i) Ten thousand dollars (\$10,000) for the employee's first year of eligibility;

(ii) Ten thousand dollars (\$10,000) for the employee's second year of eligibility;

- (iii) Fifteen thousand dollars (\$15,000) for the employee's third year of eligibility; and (iv) Fifteen thousand dollars (\$15,000) for the employee's fourth year of eligibility.
- (c) For mid-level practitioner reimbursements, a single yearly reimbursement may be made to or on behalf of an eligible mid-level practitioner not to exceed: (i) Ten thousand dollars (\$10,000) for the employee's first year of eligibility;
- (ii) Ten thousand dollars (\$10,000) for the employee's second year of eligibility;
- (iii) Fifteen thousand dollars (\$15,000) for the employee's third year of eligibility; and (iv) Fifteen thousand dollars (\$15,000) for the employee's fourth year of eligibility.

History.

I.C., § 67-5339, as added by 2014, ch. 279, § 1, p. 705.

STATUTORY NOTES

Compiler's Notes.

Former § 67-5339 was amended and redesignated as § 67-5333(2), pursuant to S.L. 2006, ch. 380, § 18.

For more information on the Idaho state hospitals, see <https://healthandwelfare.idaho.gov/Medical/MentalHealth/AdultMentalHealth/StateHospitals/tabid/495/Default.aspx>.

For more information on the division of behavioral health, referred to in subsection (5), see <https://healthandwelfare.idaho.gov/Default.aspx?TabId=103>.

§ 67-5340. Leave of absence with pay in lieu of workmen's compensation benefits. — (1) Whenever any employee of the state of Idaho who is categorized as a police officer for retirement purposes pursuant to section 59-1302A [59-1303], Idaho Code, is physically disabled by a serious injury arising out of and in the course of his duties, and the injury is induced by a second party, he shall be entitled, regardless of his period of service with the department, to a leave of absence while so disabled without loss of salary or benefits for a period of not more than one (1) year. Any workmen's [worker's] compensation payments made to the employee shall revert back to the employee's department. For the purposes of this section, "serious injury" means an injury which renders the police officer incapable of performing the regularly assigned duties of his regular employment position or office and "injury induced by a second party" means an injury induced by the negligent, malicious, or intentional act or omission of another person during a chargeable misdemeanor or felony.

(2) It shall be the duty of the director of the applicable department to determine whether or not the disability referred to in subsection (1) of this section arose out of and in the course of duty. The director of the applicable department shall also determine when such disability ceases.

(3) Payment of salary pursuant to this section shall not preclude the disabled police officer from receiving regular medical, surgical or hospital coverage as provided pursuant to [section 67-5761, Idaho Code](#).

(4) If a police officer is disabled for more than one (1) year then the regular disability insurance provisions of the Idaho Code shall apply to any period of disability beyond the one (1) year period of disability covered by this section.

(5) The provisions of this section shall not apply to periods of disability which occur subsequent to termination of employment by resignation, retirement, or dismissal. When the provisions of this section do not apply, the employee shall be eligible for those benefits which would apply if this section had not been enacted.

History.

I.C., § 67-5340, as added by 1988, ch. 376, § 1, p. 1109.

STATUTORY NOTES

Compiler's Notes.

Section 59-1302A, referred to in subsection (1) of this section, has been amended and redesignated as § 59-1303 by S.L. 1990, ch. 231, § 3.

The bracketed insertion in the second sentence in subsection (1) was added by the compiler to account for the 1989 retitling of Title 72 provisions.

§ 67-5341. Retiree medical insurance coverage — Legislative intent — Account created — Voluntary employee participation — Salary withholding — Administration of program. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-5340, as added by 1988, ch. 276, § 1, p. 907; am. 1989, ch. 188, § 1, p. 463, was repealed by S.L. 1990, ch. 248, § 1.

§ 67-5342. Severance pay for state employees. — Upon termination from state service, no classified or exempt employee shall be eligible for severance pay and no employer shall provide or pay severance pay to such an employee or former employee. As used in this section, “severance pay” shall mean money, exclusive of wages or salary, vacation leave payoff, compensatory time leave and earned administrative leave payoff, paid to a classified or exempt employee who resigns from state service of his own volition and not under duress.

History.

I.C., § 67-5342, as added by 1993, ch. 336, § 1, p. 1265; am. 2006, ch. 380, § 21, p. 1175.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 380, inserted “vacation leave payoff, compensatory time leave and earned administrative leave payoff.”

§ 67-5342A. Severance pay — Purchase of membership service prohibited. — The provisions of this section shall apply to classified or exempt state employees of the legislative and executive branches of government. For purposes of this chapter, the term “severance pay” as provided for in section 67-5342, Idaho Code, shall include any payment by an employer toward the purchase of membership service pursuant to section 59-1363, Idaho Code. Provided however, that nothing in this section shall change any rights provided pursuant to section 59-1362, Idaho Code, related to active duty service.

History.

I.C., § 67-5342A, as added by 2010, ch. 173, § 1, p. 356.

§ 67-5343. Leave of absence for bone marrow or organ donation. —

(1) A full-time employee shall be granted a leave of absence for the time specified for the following purposes:

(a) Five (5) workdays to serve as a bone marrow donor if the employee provides the appointing authority written verification that the employee is to serve as a bone marrow donor; and

(b) Thirty (30) workdays to serve as a human organ donor if the employee provides the appointing authority written verification that the employee is to serve as a human organ donor.

(2) An employee who is granted a leave of absence pursuant to the provisions of this section shall receive his compensation without interruption during the leave of absence. For purposes of determining longevity, performance, pay advancement and performance awards and for receipt of any benefit that may be affected by a leave of absence, the service of the employee shall be considered uninterrupted by the leave of absence.

(3) The appointing authority shall not penalize an employee for requesting or obtaining a leave of absence pursuant to the provisions of this section.

(4) The leave authorized by this section may be requested by the employee only if the employee is the person who is serving as the donor.

(5) Full-time employees shall be notified of the leave offered pursuant to this section each April in an electronic message distributed by the state controller's office.

History.

I.C., § 67-5343, as added by 2006, ch. 257, § 1, p. 794; am. 2018, ch. 98, § 2, p. 207.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Amendments.

The 2018 amendment, by ch. 98, inserted “bone marrow or” in the section heading and added subsection (5).

Chapter 54

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Sec.

67-5401. Purposes.

67-5402. Definitions.

67-5403. Commission for the blind and visually impaired — Creation — Composition — Appointment — Transfer of powers from department of public assistance.

67-5404. Compensation.

67-5405. Organization of commission — Employment of administrator.

67-5406. Meetings — Quorum.

67-5407. Duties.

67-5408. Commission as agency to administer rehabilitation in federal programs.

67-5409. Qualifications for the administrator and other employees.

67-5410. Limitation on disclosure by commission concerning persons applying for services to the blind.

67-5411. Commission as sole licensing agency under the provisions of the Randolph-Sheppard vending stand act.

67-5412. Administrator to prepare a state plan for vocational rehabilitation of the blind.

67-5413. Acceptance of federal acts.

67-5414. Reports of medical authorities establishing blindness.

67-5415. Statistical register of blind — Maintenance by administrator.

§ 67-5401. Purposes. — The purposes of this act are:

(1) To relieve blind persons from the distress of poverty; (2) To encourage and assist blind persons in their efforts to become socially and economically independent and to render themselves more self-supporting; and (3) To enlarge the opportunities of blind persons to obtain education, vocational training and employment.

History.

1967, ch. 373, § 1, p. 1071.

STATUTORY NOTES

Cross References.

Denial of use of facilities by person accompanied by assistance dog prohibited, § 18-5812A.

Persons training assistance dogs, rights and liabilities, § 56-704B.

Rights of blind and physically handicapped persons, § 56-701 et seq.

Compiler's Notes.

The term “this act” in the introductory paragraph refers to S.L. 1967, Chapter 373, which is compiled as §§ 56-201 to 56-203 and 67-5401 to 67-5412. Probably, the reference should be to “this chapter,” being chapter 54, title 67, Idaho Code.

§ 67-5402. Definitions. — As used in this act, unless the context otherwise requires:

(1) “Commission” means the Idaho commission for the blind and visually impaired.

(2) “Blind” or “visually impaired” means a person whose visual acuity with correcting lenses is not better than 20/200 in the better eye; or a person whose vision in the better eye is restricted to a field which subtends an angle of not greater than 20 degrees; or a person who is functionally blind; or a person who is without any sight.

(3) “Functionally blind” means a person with a visual impairment which constitutes or results in a substantial impediment to employment, or substantially limits one (1) or more major life activities.

(4) “Prevention of blindness and sight restoration” means treatment or operations to prevent blindness or restore vision to applicants or recipients of services to the blind without financial resources to procure such services for themselves, who request and make written application for such treatment or operation.

History.

1967, ch. 373, § 2, p. 1071; am. 1967 (1st E.S.), ch. 14, § 1, p. 41; am. 1973, ch. 103, § 1, p. 176; am. 1982, ch. 350, § 2, p. 866; am. 1987, ch. 74, § 1, p. 145; am. 1994, ch. 159, § 5, p. 359; am. 2003, ch. 127, § 1, p. 378.

STATUTORY NOTES

Cross References.

Aid to the blind, § 56-208.

Employment by state and political subdivisions, § 56-707.

Compiler’s Notes.

The term “this act” in the introductory paragraph refers to S.L. 1967, Chapter 373, which is compiled as §§ 56-201 to 56-203 and 67-5401 to 67-

5412. Probably, the reference should be to “this chapter,” being chapter 54, title 67, Idaho Code.

§ 67-5403. Commission for the blind and visually impaired — Creation — Composition — Appointment — Transfer of powers from department of public assistance. — (1) There is hereby created in the office of the governor the Idaho commission for the blind and visually impaired. The commission shall consist of five (5) members, at least three (3) of whom shall be blind or visually impaired, and not more than three (3) of whom shall belong to the same political party.

The governor shall appoint members of the commission subject to ratification by the senate at the next regular or special session of the legislature.

All appointments shall be made for terms of three (3) years, beginning on July 1st. If for any reason a member should leave the commission before his term expires, the governor shall appoint another member to fill out the unexpired term.

(2) All powers and duties of the department of public assistance relating to services to the blind and sight conservation as herein defined, are transferred to and shall be assumed by the commission on October 1, 1967.

History.

1967, ch. 373, § 3, p. 1071; am. 1967 (1st E.S.), ch. 17, § 1, p. 46; am. 1974, ch. 22, § 46, p. 592; am. 1994, ch. 159, § 6, p. 359.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1967 (1st E.S.), ch. 17, amended § 17 of S.L. 1967, ch. 373, to provide that subsections (1) and (3) of this section should be in full force and effect from and after July 1, 1967, and that the remainder of the act should be in full force and effect from and after October 1, 1967.

Section 4 of S.L. 1967 (1st E.S.), ch. 17 declared an emergency. Approved July 1, 1967.

§ 67-5404. Compensation. — Members of the commission shall be compensated as provided by section 59-509(h), Idaho Code[,] or as provided by section 59-509(n), Idaho Code, pursuant to a one (1) time irrevocable election made in writing by the member.

History.

1967, ch. 373, § 4, p. 1071; am. 1980, ch. 247, § 88, p. 582; am. 1990, ch. 33, § 1, p. 48; am. 2012, ch. 115, § 3, p. 317.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 115, added “or as provided by [section 59-509\(n\), Idaho Code](#), pursuant to a one (1) time irrevocable election made in writing by the member.”

Compiler’s Notes.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

Effective Dates.

Section 4 of S.L. 2012, ch. 115 declared an emergency. Approved March 23, 2012.

§ 67-5405. Organization of commission — Employment of administrator. — The commission shall elect a chairman and a vice chairman. The commission shall function as the policy setting entity of the commission programs and shall employ and fix the compensation of a full-time administrator who shall serve as its secretary, and who shall be the chief administrative officer of the commission.

History.

1967, ch. 373, § 4, p. 1071; am. 1974, ch. 22, § 47, p. 592; am. 1987, ch. 74, § 2, p. 145; am. 1988, ch. 108, § 1, p. 198.

STATUTORY NOTES

Effective Dates.

Section 61 of S.L. 1974, ch. 22 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-5406. Meetings — Quorum. — The commission shall meet at least once every quarter regularly and at such times as called by the chairman. A majority of the commission members shall constitute a quorum for all business.

History.

1967, ch. 373, § 6, p. 1071; am. 1990, ch. 1, § 1, p. 3.

§ 67-5407. Duties. — The commission shall:

(a) Assist blind persons in achieving physical and psychological orientation, inform blind persons of available services, stimulate and assist the blind in achieving social and economic independence, and do all things which will ameliorate the condition of the blind.

(b) Provide intensive programs of case finding, education, vocational and other rehabilitation training, job findings and placement, physical restoration, and such other services and equipment as may assist in rendering blind persons more self-supporting and socially independent.

(c) Provide a business enterprise program including management, supervision and development services.

(d) Provide a program for the prevention of blindness and sight restoration as designed in this act. The commission shall pay for all necessary expenses incurred in connection with the diagnosis, treatment or surgery to prevent blindness or restore vision. Necessary expenses include the cost of getting service, the cost of services, medical and physician fees, hospital services, nursing services, maintenance while the applicant or recipient is away from the home, transportation to the physician or hospital and return to his home, and the cost of nursing home care when such care is necessary. These services will be provided to individuals without financial resources to procure such services for themselves.

(e) Establish rules in accordance with the provisions of the administrative procedure act.

(f) On or before December first in 1968, and each year thereafter, render a report to the legislature and to the governor of its activities, including recommendations for improvements therein.

(g) Enter into contracts and agreements with the federal government through its appropriate agency or instrumentality whereby the commission shall receive federal grants or other benefits for the prevention of blindness or for services to the blind, including medical eye care, instruction in the home, social adjustment and vocational and other rehabilitations, and shall act as the official state agency to collaborate with the federal government in

the administration of any present or subsequent programs that may be set up for the purposes of providing services to or rehabilitating the blind.

History.

1967, ch. 373, § 7, p. 1071; am. 1967 (1st E.S.), ch. 14, § 2, p. 41; am. 1983, ch. 75, § 3, p. 161; am. 1984, ch. 147, § 12, p. 342; am. 1988, ch. 107, § 1, p. 196; am. 1992, ch. 58, § 8, p. 168; am. 1997, ch. 267, § 13, p. 763.

STATUTORY NOTES

Cross References.

Administrative procedure act, § 67-5201 et seq.

Compiler's Notes.

The term “this act” in subsection (d) refers to S.L. 1967, Chapter 373, which is compiled as §§ 56-201 to 56-203 and 67-5401 to 67-5412. Probably, the reference should be to “this chapter,” being chapter 54, title 67, Idaho Code.

Effective Dates.

Section 3 of S.L. 1967 (1st E.S.), ch. 14 provided the act should be in full force and effect from and after October 1, 1967.

Section 13 of S.L. 1984, ch. 147 declared an emergency. Approved March 31, 1984.

§ 67-5408. Commission as agency to administer rehabilitation in federal programs. — The commission is hereby designated as the sole agency responsible for the vocational and other rehabilitation of the blind and shall administer the program of vocational rehabilitation for the blind as provided for in the vocational rehabilitation act amendments of 1965 (P.L. 113 [333], 89th Congress; 29 U.S.C. Chapter 4 (Section 31 et seq.)[I]), and subsequent amendments.

History.

1967, ch. 373, § 8, p. 1071.

STATUTORY NOTES

Federal References.

The vocational rehabilitation act amendments of 1965 were enacted by **P.L. 333 of the 89th Congress**, and were codified at **29 U.S.C. § 31 et seq.** The provisions codified at **29 U.S.C. § 31 et seq.**, were repealed by **P.L. 93-112**, the Rehabilitation Act of 1973, effective December 25, 1973. See **29 U.S.C.S. § 701 et seq.**

Compiler's Notes.

The bracketed “333,” following “P.L. 113,” was added by the compiler to correct the public law reference.

The bracketed insertion near the end of the section was added by the compiler to supply the missing punctuation.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-5409. Qualifications for the administrator and other employees.

— The administrator of the commission shall be experienced in work for the blind and preference shall be given to equally qualified blind persons in filling the position of administrator of the commission.

The administrator shall, subject to the provisions of chapter 53, title 67, Idaho Code, employ and fix the compensation of all other employees of the commission who shall be directly responsible to the administrator of the commission.

Professional employees shall consist of persons skilled in assisting blind persons to achieve social and economic independence.

History.

1967, ch. 373, § 9, p. 1071; am. 1987, ch. 74, § 3, p. 145.

CASE NOTES

Cited *Gardner v. Evans*, 110 Idaho 925, 719 P.2d 1185 (1986).

§ 67-5410. Limitation on disclosure by commission concerning persons applying for services to the blind. — Information with respect to any individual applying for or receiving services to the blind shall not be disclosed by the commission or any of its employees to any person, association or body unless such disclosure is related directly to carrying out the provisions of this act or upon written permission of the applicant or recipient.

History.

1967, ch. 373, § 10, p. 1071.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the end of the section refers to S.L. 1967, Chapter 373, which is compiled as §§ 56-201 to 56-203 and 67-5401 to 67-5412. Probably, the reference should be to “this chapter,” being chapter 54, title 67, Idaho Code.

§ 67-5411. Commission as sole licensing agency under the provisions of the Randolph-Sheppard vending stand act. — The commission is hereby designated as the sole licensing agency under the provisions of the Randolph-Sheppard vending stand act (P.L. 732, 74th Congress, 49 stat. 1559, as amended by section 4 of P.L. 565, 83rd Congress, 68 stat. 663; 20 U.S.C. 107, Chapter 6A).

History.

1967, ch. 373, § 11, p. 1071.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-5412. Administrator to prepare a state plan for vocational rehabilitation of the blind. — The administrator of the commission shall prepare a state plan for vocational rehabilitation of the blind and after approved by the commission shall submit the same to the United States department of education pursuant to the requirements of the Rehabilitation Act of 1973, as amended, P.L. 99-506, 99th Congress, for approval.

History.

1967, ch. 373, § 12, p. 1071; am. 1987, ch. 74, § 4, p. 145.

STATUTORY NOTES

Federal References.

The Rehabilitation Act of 1973, as amended **P.L. 99-506**, is compiled as **29 U.S.C.S. § 701 et seq.**

Compiler's Notes.

Section 16 of S.L. 1967, ch. 373 read: “The provisions of this act are hereby declared to be separable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 4 of S.L. 1967 (1st E.S.), ch. 17 declared an emergency. Approved July 1, 1967.

Section 17 of S.L. 1967, ch. 373, as amended by S.L. 1967 (1st E.S.), ch. 17, § 2, provided that subsections (1) and (3) of § 67-5403 should become effective July 1, 1967 and the remainder of the act should become effective October 1, 1967.

§ 67-5413. Acceptance of federal acts. — The state of Idaho and the commission for the blind and visually impaired hereby affirm their acceptance of the provisions and benefits of the act of Congress entitled, “The Randolph-Sheppard Act,” P.L. 93-516, 93rd Congress, and “The Rehabilitation Act of 1973,” as amended, P.L. 98-221, 98th Congress, and will observe and comply with all requirements of such acts, limited only by approved state plan and funding restrictions.

History.

I.C., § 67-5413, as added by 1986, ch. 341, § 1, p. 133; am. 1994, ch. 159, § 7, p. 359.

STATUTORY NOTES

Prior Laws.

Former § 67-5413, which comprised **I.C., § 67-5413**, as added by 1973, ch. 103, § 2, p. 176 was repealed by S.L. 1982, ch. 350, § 3.

Federal References.

P.L. 93-516 and **P.L. 98-221**, referred to in this section, are codified at **29 U.S.C.S. § 701 et seq.**

§ 67-5414. Reports of medical authorities establishing blindness. — Any Idaho physician, optometrist, or other person who diagnoses a person as blind, as defined in section 67-5402(2), Idaho Code, shall, if the person consents, report within thirty (30) days the result of the examination to the administrator of the commission. Disclosure of this information will be limited to carrying out the provisions of this act or upon written permission of the blind person.

History.

I.C., § 67-5414, as added by 1990, ch. 177, § 1, p. 376.

STATUTORY NOTES

Compiler's Notes.

The words “this act” in the last sentence refer to S.L. 1990, ch. 177, which is compiled as §§ 67-5414 and 67-5415.

§ 67-5415. Statistical register of blind — Maintenance by administrator. — The administrator of the commission shall maintain a statistical register of the blind in the state which shall describe therein the condition, cause of blindness and capacity to benefit from agency services. The register shall be maintained on a current basis so as to give information which will aid in planning improved facilities and services to the blind and restoration and conservation of sight.

History.

I.C., § 67-5415, as added by 1990, ch. 177, § 1, p. 376.

Idaho Code Ch. 55

• [Title 67](#) • « [Ch. 55](#) »

Chapter 55

POST-ATTACK RESOURCE MANAGEMENT ACT

Sec.

67-5501. Short title.

67-5502. Purpose of act — Possibility of attack — Need for emergency powers — Coordination with comparable functions of federal government.

67-5503. Definitions.

67-5504. State emergency resource planning committee — Members — State emergency planning director.

67-5505. Authority of governor — Cooperation with federal government, other states, private agencies — Rules and regulations.

67-5506. Order of post-attack recovery and rehabilitation emergency by governor — Convening of legislature — Emergency declared by president — Termination of emergency by legislature, president or congress — Automatic termination.

67-5507. Review of orders and acts by supreme court.

67-5508. Penalties.

§ 67-5501. Short title. — This act may be cited as the “Post-Attack Resource Management Act.”

History.

1967, ch. 57, § 1, p. 116.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1967, Chapter 57, which is compiled as §§ 67-5501 to 67-5508.

§ 67-5502. Purpose of act — Possibility of attack — Need for emergency powers — Coordination with comparable functions of federal government. — (a) The legislature recognizes that an attack upon the United States is a possibility; that such attack might be of unprecedented size and destructiveness; that a considerable period of time may elapse after an attack before federal operational control over the management of resources can be instituted; and that federal planning and activities with respect to post-attack recovery and rehabilitation necessarily are predicated on the ability of the states and their political subdivisions to prepare for and respond promptly to the problems created by an attack. Therefore, it is hereby found and declared to be necessary:

(1) To create an office of emergency resource management for the execution of a plan for emergency resource management; (2) To confer upon the governor and upon the executive heads of governing bodies of political subdivisions of the state the emergency powers provided herein.

(b) It is further declared to be the purpose of this act and the policy of this state that all resource management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government, of other states and localities, and of private agencies to the end that the most effective preparation and use may be made of available manpower, resources, and facilities in an emergency.

History.

1967, ch. 57, § 2, p. 116.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in subsection (b) refers to S.L. 1967, Chapter 57, which is compiled as §§ 67-5501 to 67-5508.

§ 67-5503. Definitions. — (a) “Emergency resources management plan” shall mean that plan prepared by the Idaho emergency resources planning committee, approved by the federal office of emergency planning and adopted by the governor, which sets forth the organization, administration, and functions for the emergency management by the state government of essential resources and economic stabilization within the state. Such plan shall provide an emergency organization and emergency administrative policies and procedures for the conservation, allocation, distribution, and use of essential resources available to the state following a civil defense emergency such as an attack upon the United States. It shall be supplemental to the national plan for emergency preparedness adopted by the President of the United States, and shall become operative upon the establishment of a civil defense emergency. To the extent that the federal government is either incapable of or not prepared to conduct its emergency resources management program, the state will substitute for and replace the federal program until such time as the federal program becomes effective in the state.

(b) “Enemy attack” means an actual attack by a foreign nation by hostile air raids, or other forms of warfare, upon this state or any other state or territory of the United States.

(c) “Political subdivision” shall mean any county or city in the state.

History.

1967, ch. 57, § 3, p. 116.

§ 67-5504. State emergency resource planning committee — Members — State emergency planning director. — (a) The governor may establish a state emergency resource planning committee (hereinafter referred to as the “state committee”) and the office of state emergency planning director (hereinafter referred to as the “director”), and appoint to serve at his pleasure the members of such state committee and the director.

(b) The state committee shall consist of the governor, who shall be chairman, the director, other state officials designated by the governor, and persons representative of industry, commerce, labor, agriculture, civic, governmental, and professional groups designated by the governor. In the absence of the governor, the director shall act as chairman.

History.

1967, ch. 57, § 4, p. 116.

STATUTORY NOTES

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-5505. Authority of governor — Cooperation with federal government, other states, private agencies — Rules and regulations. —

(a) The governor shall have general direction and control of the emergency resources management within this state and all officers, boards, agencies, individuals, or groups established under the emergency resource management plan.

(b) In performing his duties under this act, the governor is authorized to cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of resources.

(c) In performing his duties under this act, and to effect its policies and purpose, the governor is further authorized and empowered to make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this act within the limits of authority conferred upon him herein, with due consideration of the emergency resources management plans of the federal government.

History.

1967, ch. 57, § 5, p. 116.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in subsections (b) and (c) refers to S.L. 1967, Chapter 57, which is compiled as §§ 67-5501 to 67-5508.

§ 67-5506. Order of post-attack recovery and rehabilitation emergency by governor — Convening of legislature — Emergency declared by president — Termination of emergency by legislature, president or congress — Automatic termination. — (a) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the post-attack recovery or rehabilitation of the United States or any part thereof, shall declare by order the existence of a post-attack recovery and rehabilitation emergency. Any such order shall be ineffectual, unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within forty-five (45) days.

(b) During the period when the order issued pursuant to subsection (a) of this section is in force, or during the continuance of any emergency declared by the president of the United States or the congress calling for post-attack recovery and rehabilitation activities, subject to the limitations set forth in this act, and in a manner consistent with any rules, regulations, or orders and policy guidance issued by the federal government, the governor may issue, amend and enforce rules, regulations, and orders to:

- (1) control, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means the use, sale or distribution of food, feed, fuel, clothing and other commodities, materials, goods or services;
- (2) prescribe and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and
- (3) take such other action as may be necessary for the management of resources following an attack.

(c) All rules, regulations and orders issued pursuant to authority conferred by this act shall have the full force and effect of law during the continuance of an order or declaration of emergency as contemplated by this section, when a copy of the rule, regulation, or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the clerk of the district court. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be deemed a complete and sufficient substitute. All existing laws, ordinances, rules, regulations, and orders inconsistent with the provisions of this act, or any rule, regulation or order issued under the authority thereof, shall be inoperative during the period of time and to the extent such inconsistency exists.

(d) Any authority exercised pursuant to an order or emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction, or as to any specified part thereof.

(e) The governor's power and authority to issue an order following an attack shall be terminated by the passage of a resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress: provided that the order shall terminate automatically six (6) months after issuance and a similar order may not be issued unless concurrence is given thereto by a resolution of the legislature.

History.

1967, ch. 57, § 6, p. 116.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in subsections (b) and (c) refers to S.L. 1967, Chapter 57, which is compiled as §§ 67-5501 to 67-5508.

§ 67-5507. Review of orders and acts by supreme court. — Every order and the facts related therein issued under this act shall be subject to judicial inquiry by the state supreme court as to the existence of the facts underlying the issuance of the order and whether such action was reasonable under the circumstances.

History.

1967, ch. 57, § 7, p. 116.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1967, Chapter 57, which is compiled as §§ 67-5501 to 67-5508.

§ 67-5508. Penalties. — Any person violating any of the rules, regulations or orders adopted and promulgated under section 67-5506[, Idaho Code,] shall, upon conviction thereof, be subject to a fine not to exceed \$1,000 or to a term of imprisonment of not to exceed six (6) months, or both such fine and imprisonment.

History.

1967, ch. 57, § 8, p. 116.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion was added by the compiler to conform to the statutory citation style.

Chapter 56

COMMISSION ON ARTS

Sec.

67-5601. Declaration of policy.

67-5602. Commission on the arts — Creation — Membership.

67-5603. Terms of members — Appointment of officers — Service of members — Compensation.

67-5604. Employees.

67-5605. Duties of commission.

67-5606. Hearings — Contracts — Acceptance of gifts and bequests.

67-5607. Agency to handle funds from national endowment.

67-5608. Transfer of powers, duties, records, assets, and liabilities of temporary commission. [Repealed.]

§ 67-5601. Declaration of policy. — It is hereby found that there is an increasing appreciation and interest in the practice and enjoyment of the arts, that our citizens are becoming aware, due to increasing leisure time, of a broader and richer life through artistic endeavors, that there is need to improve the cultural environment of our state, and that growth of our industry, commerce, agriculture, and quality of life will be enhanced by cultural development.

It is hereby declared to be the policy of the state to encourage the development of our artistic and cultural life and to join with all persons and institutions concerned with the arts to insure that the role of the arts in our communities will grow and play an ever more significant part in the welfare and educational experience of our citizens.

History.

1967, ch. 48, § 1, p. 90; am. 2004, ch. 231, § 1, p. 677.

§ 67-5602. Commission on the arts — Creation — Membership. —

There is hereby created and established within the office of the governor a state commission, to be known as the Idaho commission on the arts, to consist of thirteen (13) members, representative of the public, Idaho's ethnic and cultural diversity, the various fields of the arts, and all geographic areas of our state. Each member shall be appointed by the governor from among citizens of the state who are widely known for their interest, competence, and experience in the arts. In making such appointments, due consideration shall be given to the recommendations made by representative civic, educational and professional associations and groups concerned with or engaged in production or presentation of the arts generally.

History.

1967, ch. 48, § 2, p. 90; am. 1969, ch. 316, § 1, p. 974; am. 1974, ch. 5, § 7, p. 23; am. 1978, ch. 303, § 1, p. 760; am. 1991, ch. 9, § 1, p. 25; am. 2003, ch. 18, § 1, p. 70; am. 2004, ch. 231, § 2, p. 677.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 1974, ch. 5 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-5603. Terms of members — Appointment of officers — Service of members — Compensation. — The term of office of each member shall be four (4) years; provided that all members' terms shall be extended to June 30 of the year their terms expire. When a member's term expires, the governor shall appoint a member for a four (4) year term which shall be from July 1 to June 30 four (4) calendar years later. A vacancy shall be filled for the remainder of the term. The governor shall designate a chairman and a vice-chairman from the members of the commission to serve as such at the pleasure of the governor. All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments. The members of the commission shall be compensated as provided by section 59-509(b), Idaho Code.

History.

1967, ch. 48, § 3, p. 90; am. 1969, ch. 316, § 2, p. 974; am. 1978, ch. 303, § 2, p. 760; am. 1980, ch. 247, § 89, p. 582; am. 1991, ch. 9, § 2, p. 25; am. 1999, ch. 205, § 1, p. 552; am. 2000, ch. 307, § 1, p. 1043.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1969, ch. 316 declared an emergency. Approved March 27, 1969.

Section 3 of S.L. 1991, ch. 9 declared an emergency. Approved February 20, 1991.

Section 2 of S.L. 1999, ch. 205 declared an emergency. Approved March 23, 1999.

Section 2 of S.L. 2000, ch. 307 declared an emergency and approved April 14, 2000, provided that members of the Commission on the Arts whose terms would expire on April 1, 2000, may continue to serve until July 1, 2000, and shall be eligible to be reappointed by the governor.

§ 67-5604. Employees. — The commission shall employ, and at pleasure remove an executive director. The executive director shall be the chief executive officer of the commission. The director may, subject to the approval of the commission, employ and remove any consultants, experts or other employees as may be needed. The executive director shall set the compensation for all nonclassified employees within the amounts made available for such purposes.

History.

1967, ch. 48, § 4, p. 90; am. 1978, ch. 303, § 3, p. 760; am. 2004, ch. 231, § 3, p. 677.

§ 67-5605. Duties of commission. — The duties of the commission shall be:

(1) To stimulate and encourage throughout the state the study and presentation of the arts and public interest and participation therein; (2) To make such surveys as may be deemed advisable of public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theatre, dance, creative writing, painting, sculpture, architecture, and folk and traditional arts and crafts, and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state; (3) To take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our state and to expand the state's cultural resources; (4) To encourage and assist freedom of artistic expression essential for the well-being of the arts; (5) To establish such rules in compliance with chapter 52, title 67, Idaho Code, as may be necessary to discharge the duties of the commission.

History.

1967, ch. 48, § 5, p. 90; am. 2004, ch. 231, § 4, p. 677.

§ 67-5606. Hearings — Contracts — Acceptance of gifts and bequests. — The commission is hereby authorized and empowered to hold public and private hearings, to enter into contracts, within the limit of funds available therefor, with individuals, organizations and institutions for services furthering the educational and cultural objectives of the commission's programs; to enter into contracts, within the limit of funds available therefor, with local and regional associations for cooperative endeavors furthering the educational and cultural objectives of the commission's programs; to accept gifts, contributions, and bequests of funds from individuals, foundations, corporations, and other organizations or institutions, for the purpose of furthering the educational and cultural objectives of the commission's programs; to make and sign any agreements and to do and perform any acts that may be necessary to carry out the purposes of the act.

History.

1967, ch. 48, § 6, p. 90; am. 2004, ch. 231, § 5, p. 677.

STATUTORY NOTES

Compiler's Notes.

The term "the act" at the end of the section refers to S.L. 1967, Chapter 48, which is compiled as §§ 67-5601 to 67-5607.

§ 67-5607. Agency to handle funds from national endowment. — The commission is the official agency of this state to receive and disburse any funds made available by the national endowment for the arts.

All funds in the custody or control of the commission on the arts, all gifts, contributions and bequests of funds to the commission, and any funds received from the national endowment for the arts by the commission, are hereby declared exempt from the provisions of the standard appropriations act of 1945.

History.

1967, ch. 48, § 7, p. 90; am. 2004, ch. 231, § 6, p. 677.

STATUTORY NOTES

Compiler's Notes.

For further information on the national endowment for the arts, see <https://www.arts.gov>.

The standard appropriations act of 1945, referred to in the second paragraph, is codified as chapter 36, title 67, Idaho Code.

§ 67-5608. Transfer of powers, duties, records, assets, and liabilities of temporary commission. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1967, ch. 48, § 8, p. 90, was repealed by S.L. 2004, ch. 231, § 7.

Chapter 57

DEPARTMENT OF ADMINISTRATION

Sec.

67-5701. Department created — Appointment of director — Duties.

67-5702. Divisions — Appointment of administrators.

67-5703. Department of administration may receive payment for services to federal, county and city agencies — Appropriation.

67-5704. Advance payments and interaccount transactions.

67-5705. Division of public works.

67-5706. Allocation of office space.

67-5707. Control over capitol building and grounds. [Repealed.]

67-5707A. Procedures for state-owned dwellings.

67-5708. Leasing of facilities for state use — Control of parking.

67-5708A. State facilities management — Comparative lease cost analysis and accountability.

67-5708B. Facilities needs planning.

67-5709. Management of state facilities.

67-5709A. Sale, transfer or disposition of state administrative facilities.

67-5709B. Development of facilities. [Null and void.]

67-5710. Permanent building fund advisory council — Approval of use of fund — Duties of administrator of public works.

67-5710A. Requirement of plans and specification approval by permanent building fund advisory council and delegation of project oversight by the administrator for the division of public works.

67-5710B. Definitions.

67-5711. Construction, alteration, equipping, furnishing and repair of public buildings and works.

67-5711A. Design-build contracting authorized.

67-5711B. Emergency contracting authorized division of public works.

67-5711C. Construction of public projects — Competitive sealed bidding.

67-5711D. Energy savings performance contracts.

67-5711E. Legislative intent — Capitol building projects — Construction manager at-risk services. [Null and void.]

67-5711F. Capitol building projects — Chapter 10, title 44, Idaho Code, inapplicable. [Null and void.]

67-5712. Projection of building requirements report.

67-5713. Construction and alteration of state correctional facilities.

67-5714. Division of purchasing. [Repealed.]

67-5715. Purpose of act. [Repealed.]

67-5716. Definitions. [Repealed.]

67-5717. Powers and duties of the administrator of the division of purchasing. [Repealed.]

67-5718. Requisitions for property — Notice — Form — Guarantee — Procedure for bidding. [Repealed.]

67-5718A. Acquisition of property by contract — Award to more than one bidder — Standards for multiple awards — Approval by administrator. [Repealed.]

67-5719. Statement of supplies on hand — Estimated requirements — Inspections and inventories. [Repealed.]

67-5720. Acquisition in open market — Emergency purchases. [Repealed.]

67-5721. Acquisition of nonowned property — Options to acquire — Determination of option costs. [Repealed.]

67-5722. Declaration of surplus property.

67-5723. Discounts — Negotiations for required rules, regulations and procedures. [Repealed.]

67-5724. Contracts with federal government or its agencies exempt from certain provisions. [Repealed.]

67-5724A. Acquisition of property — General services administration federal supply schedule contracts. [Repealed.]

67-5725. Preservation of records — Written contracts — Void contracts. [Repealed.]

67-5726. Prohibitions. [Repealed.]

67-5727. Maintenance of stocks — Requisitions from stocks — Payment. [Repealed.]

67-5727A. Participation in group discount purchasing. [Repealed.]

67-5728. Procuring and purchasing by state institution of higher education. [Repealed.]

67-5729. Application of administrative procedure act. [Repealed.]

67-5730. Qualification of vendors — disqualification of vendors — Notice — Appeals. [Repealed.]

67-5731. Procedure for challenging specifications — Hearings on influencing contracts — Final determinations. [Repealed.]

67-5732. Rules. [Repealed.]

67-5732a, 67-5732b. [Repealed.]

67-5732A. Disposal of surplus personal property authorized.

67-5732B. Governor's housing committee personal property exempt from act.

67-5733. Division of purchasing — Appeals. [Repealed.]

67-5734. Penalties. [Repealed.]

67-5735. Processing — Reimbursement of contractor. [Repealed.]

67-5736. Acceptance. [Repealed.]

67-5737. Severability.

67-5738, 67-5739. [Repealed.]

67-5740. Additional authority and duties of the administrator of the division of purchasing.

67-5741. Delegation of duties — Bonding of agency personnel.

67-5742. Delegation of authority to acquire surplus property.

67-5743. Transfer charges.

67-5744. Surplus property fund maintained — Charges and fees, deposition.

67-5745. Declaration of purpose. [Repealed.]

67-5745A. Definitions. [Repealed.]

67-5745B. Idaho technology authority — Composition — Appointment and term of office — Reimbursement — Contracting for necessary services. [Repealed.]

67-5745C. General powers and duties of the authority. [Repealed.]

67-5745D. Idaho education network. [Repealed.]

67-5745E. Idaho education network program and resource advisory council (IPRAC). [Repealed.]

67-5746. Inventory of chattels — Contents — Duties of officers and employees — Recording — Annual revision — Open to inspection.

67-5747. Powers and duties. [Repealed.]

67-5748. Transfer of funds, equipment, facilities, and employees.

67-5749. Central postal system.

67-5750. Postage appropriations — Records of departmental mail kept through central postal system — Exception.

67-5751. Records management. [Repealed.]

67-5751A. Historical records. [Repealed.]

67-5752. Records management manual. [Repealed.]

67-5752A. Additional powers, duties, functions and responsibilities of bureau of budget. [Repealed.]

67-5753. Microfilming services. [Repealed.]

67-5754 — 67-5759. [Amended and Redesignated.]

67-5760. Insurance management.

67-5761. Powers and duties — Group insurance.

67-5761A. Mental health parity in state group insurance.

67-5761B. State contribution to state employee health savings accounts.

67-5761C. Health reimbursement arrangements for state employees.

67-5762. Objectives and considerations.

67-5763. Governmental body authorized to make contracts for group insurance for officers and employees.

67-5764. Part payment of premium cost by governmental body.

67-5765. Government retirement program or group insurance plans in existence unaffected.

67-5766. Authority conferred additional only.

67-5767. Director may provide service to school districts, public community colleges, public colleges, public universities or other political subdivisions.

67-5768. Nominal policyholder — No obligation to state.

67-5769. Interdepartmental transactions — Administrative contribution — Amounts — Limits — Refunds — Appropriation.

67-5770. Retirement system not affected.

67-5771. Group insurance account created — Administration — Perpetual appropriation.

67-5772. Remittance of contributions — Collection of delinquencies.

67-5773. Powers and duties — Risk management.

67-5774. Position of risk manager created — Appointment — Employment of personnel.

67-5775. Risk management guidelines.

67-5776. Retained risks account — Purposes — Amount — Limit — Appropriation — Investment.

67-5777. Interdepartmental transactions — Purposes — Appropriation.

67-5778. Collection of delinquent payments.

67-5779. Definitions. [Repealed.]

67-5780. Integrated property records system — Transfer of responsibility. [Repealed.]

67-5781. Agencies to provide records and data. [Repealed.]

67-5782. Responsibility for quality. [Repealed.]

§ 67-5701. Department created — Appointment of director — Duties. — There is hereby created the department of administration. The governor shall, subject to the advice and consent of the senate, appoint a director of administration who shall serve at the pleasure of the governor and who shall receive such salary as fixed by the governor. The director of administration shall exercise all the powers and duties necessary to carry out the proper administration of the department of administration. The department of administration shall, for the purposes of section 20, article IV, of the constitution of the state of Idaho, be an executive department of the state government.

History.

I.C., § 67-5701, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Prior Laws.

Former § 67-5701, which comprised S.L. 1967, ch. 331, § 1, p. 967, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5702. Divisions — Appointment of administrators. — The department of administration shall be composed of such divisions as are established or assigned by law, and of such other units as may be administratively established. The director of the department of administration shall appoint an administrator for each division, subject to the approval of the governor.

History.

I.C., § 67-5702, as added by 1974, ch. 34, § 2, p. 988; am. 1993, ch. 221, § 1, p. 747.

STATUTORY NOTES

Prior Laws.

Former § 67-5702, which comprised S.L. 1967, ch. 331, § 2, p. 967, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5703. Department of administration may receive payment for services to federal, county and city agencies — Appropriation. — The department of administration may enter and execute contracts to provide services to any federal, county or city agency within the state of Idaho when justified and requested by such nonstate agency and approved by the state board of examiners. The department of administration is authorized to charge and receive payment for actual and necessary expenses incurred in providing services to any unit of government under the provisions of this section. Any money received for services provided under the provisions of this section is hereby continually appropriated to the unit providing the services as compensation for such actual and necessary expenses.

History.

I.C., § 67-5703, as added by 1974, ch. 34, § 2, p. 988; am. 1993, ch. 221, § 2, p. 747.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Prior Laws.

Former § 67-5703, which comprised S.L. 1967, ch. 331, § 3, p. 967, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5704. Advance payments and interaccount transactions. — Any unit of the department of administration providing services to departments of state government as authorized in this chapter may charge and receive payment in advance of performance thereof for a period of time not to exceed the current appropriation of the department requesting such services. Such payments may be used for personnel costs and operating expenditures of the unit providing the services.

History.

I.C., § 67-5704, as added by 1974, ch. 34, § 2, p. 988; am. 1993, ch. 221, § 3, p. 747.

STATUTORY NOTES

Prior Laws.

Former § 67-5704, which comprised S.L. 1967, ch. 335, § 1, p. 972, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5705. Division of public works. — There is hereby created within the department of administration the division of public works. The director of the department of administration shall appoint an administrator for the division of public works, subject to the approval of the governor. The administrator of the division shall be exempt from the provisions of the state merit system. The administrator of the division may employ additional personnel as may be necessary, and may contract for professional services or assistance when necessary or desirable.

History.

I.C., § 67-5705, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Cross References.

State merit system, § 67-5304.

Prior Laws.

Former § 67-5705, which comprised I.C., § 67-5705, as added by 1970, ch. 144, § 1, p. 436, was repealed by S.L. 1974, ch. 34, § 1.

Effective Dates.

Section 2 of S.L. 1994, ch. 339 declared an emergency. Approved March 31, 1994.

§ 67-5706. Allocation of office space. — The division of public works shall have the power and duty to allocate all space, owned or leased in the city of Boise in the name of the state, except as provided by section 67-5707, Idaho Code, for the occupancy of the various state departments, agencies and institutions. Allocations of space will be made on the basis of functional need and statutory requirements and in conformity with standards and criteria adopted by the permanent building fund advisory council. In approving the allocations of space, the division shall first consult with and consider the recommendations and advice of the directors or executive heads of the various departments, agencies or institutions.

History.

I.C., § 67-5706, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Cross References.

Permanent building fund advisory council, § 67-5710.

Prior Laws.

Former § 67-5706, which comprised I.C., § 67-5706, as added by 1970, ch. 144, § 2, p. 436, was repealed by S.L. 1974, ch. 34, § 1.

Compiler's Notes.

Section 67-5707, referred to in the first sentence, was repealed by S.L. 1998, ch. 306, § 1, effective July 1, 1998. For present comparable provisions, see § 67-1601 et seq.

§ 67-5707. Control over capitol building and grounds. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised **I.C., § 67-5707**, as added by 1974, ch. 34, § 2, p. 988, was repealed by S.L. 1998, ch. 306, § 1, effective July 1, 1998.

§ 67-5707A. Procedures for state-owned dwellings. — The department of administration shall adopt, by rule, the procedures to be followed by each state agency in managing the acquisition, rental, tax status, and recordkeeping of state-owned dwellings.

History.

I.C., § 67-5707A, as added by 1997, ch. 137, § 1, p. 408.

§ 67-5708. Leasing of facilities for state use — Control of parking. —

(1) The department of administration shall negotiate for, approve, and make any and all lease or rental agreements for facilities to be used by the various state departments, agencies and institutions in the state of Idaho.

(2) For purposes of this section and sections 67-5708A and 67-5709, Idaho Code, the term “facility or facilities” may be used interchangeably and shall mean real property and improvements, including buildings and structures of any kind, excluding water rights not appurtenant to other facilities, and state endowment lands.

(3) The department of administration shall manage multiagency facilities constructed, acquired or refurbished through the state building authority as established in chapter 64, title 67, Idaho Code, and shall sublease the facilities to various state departments, agencies, and institutions in the state of Idaho. The department of administration is directed to operate any facilities acquired for the state and to enter into rental contracts and lease agreements consistent with the use of the facilities for state purposes when so authorized.

(4) The director may authorize and enter into leases of state capitol mall real estate and multiagency facilities constructed through the state building authority, not needed for state purposes, to other governmental entities or to nonprofit organizations upon such terms as are just and equitable.

(5) The administrator of the division of public works may promulgate rules for the control of the parking of motor vehicles in the state capitol mall.

(a) Any person who shall violate any of the provisions of the rules shall be subject to a fine of not less than two dollars (\$2.00) nor more than twenty-five dollars (\$25.00); provided however, that any person who shall violate any of the provisions of the rules concerning the altering, counterfeiting or misuse of parking permits shall be subject to a fine of not more than fifty dollars (\$50.00).

(b) Every magistrate and every court having jurisdiction of criminal offenses and the violation of public laws committed in the county of Ada

shall have jurisdiction to hear and determine violations of the provisions of the rules and to fix, impose and enforce payment of fines therefor. Alleged violations of the parking rules are not subject to the provisions of chapter 52, title 67, Idaho Code.

(6) The administrator of the division of public works may contract with a public or private entity for the rental of parking facilities in the capitol mall outside of state of Idaho office hours as defined in [section 59-1007, Idaho Code](#), and for special events as declared by the director. The department of administration may pay costs incurred in the operation and management of those properties from rents received therefrom.

(7) When a facility of the state of Idaho is authorized by concurrent resolution, and a maximum cost for the facility has been set by concurrent resolution, the administrator of the division of public works may enter into lease-purchase or other time-purchase agreements with the Idaho state building authority or other party for the facility. The director may authorize the division of public works to enter into leases incidental to the acquisition of such a facility by the Idaho state building authority.

History.

[I.C., § 67-5708](#), as added by 1974, ch. 34, § 2, p. 988; am. 1976, ch. 142, § 1, p. 527; am. 1981, ch. 330, § 1, p. 690; am. 1987, ch. 314, § 1, p. 657; am. 1994, ch. 176, § 1, p. 402; am. 1996, ch. 183, § 1, p. 578; am. 1998, ch. 149, § 1, p. 518; am. 2017, ch. 329, § 1, p. 863; am. 2020, ch. 46, § 1, p. 112.

STATUTORY NOTES

Cross References.

State building authority, § 67-6401 et seq.

Division of public works, § 67-5705.

Amendments.

The 2017 amendment, by ch. 329, added the last sentence to the last paragraph.

The 2020 amendment, by ch. 46, added the subsection designators; in subsection (5), added the paragraph designators and in the introductory paragraph, substituted “public works may” for “public works shall” near the beginning; and added the first sentence in subsection (6).

Effective Dates.

Section 2 of S.L. 1981, ch. 330 declared an emergency. Approved April 7, 1981.

Section 3 of S.L. 1987, ch. 314 read: “An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after passage and approval; Section 1 of this act shall be in full force and effect on and after January 1, 1988.”

Section 2 of S.L. 1996, ch. 183 declared an emergency. Approved March 12, 1996.

Section 2 of S.L. 2020, ch. 46 declared an emergency. Approved March 9, 2020.

§ 67-5708A. State facilities management — Comparative lease cost analysis and accountability. — (1) The director of the department of administration shall establish a program to identify and maintain a current inventory of all leases of facilities used in any manner for the conduct of functions of state government now or hereafter entered into by any state department, agency or institution. Not later than January 1, 1999, all departments, agencies and institutions shall submit copies of all leases of facilities to the director. The submitted inventory shall record the essential terms of the leases, including the rental rate, term of the lease, description of the facilities, the size of the facilities, and the governmental use of the facilities.

(2) The director of the department of administration shall establish a program for evaluation of all leases of facilities in effect on or to be entered into after January 1, 1999. No department, agency or institution may enter into or renew any lease of facilities after January 1, 1999, until a comprehensive analysis is performed by that department, agency or institution in accord with standards and criteria established by the director of the department of administration. The comprehensive analysis shall address, at a minimum, an evaluation of the need for facilities, space utilization efficiency, long-term needs and objectives, and viable alternatives to meet facility needs, including acquiring facilities with appropriated funds and leasing facilities through the state building authority. Departments, agencies and institutions shall consult with the director when performing the comprehensive analysis and, with the director's assistance, shall select the alternative that best serves long-term needs and objectives and that provides suitable facilities at the lowest responsible cost to the taxpayer measured over the time the facilities are expected to be needed, or forty (40) years, whichever is less. Departments, agencies and institutions shall include a summary of the comprehensive analysis annually in their budget requests to the governor and the legislature, and shall include in that summary, where appropriate, the time necessary to implement their selection.

For purposes of this section, consideration of the “lowest responsible cost,” shall take into account the estimated residual asset value of facilities

acquired with appropriated funds, or acquired through the state building authority or other lease-purchase arrangements and the use of public lands, wherever practicable, that are owned or can be timely acquired by the state.

History.

I.C., § 67-5708A, as added by 1998, ch. 149, § 2, p. 518.

STATUTORY NOTES

Cross References.

State building authority, § 67-6401 et seq.

Compiler's Notes.

The phrase “now or hereafter” in the first sentence in subsection (1) refers to the time after the effective date of S.L. 1998, Chapter 149, which was effective July 1, 1998.

§ 67-5708B. Facilities needs planning. — All state agencies shall prepare and maintain a five (5) year facilities needs plan and report such projected facilities needs at their annual budget hearings. State agencies shall prepare such five (5) year plan [plans] utilizing guidelines for facilities needs planning established by the department of administration. Any state agency that has unused, underused or available building space shall notify the department of administration and seek opportunities to co-occupy those facilities or any newly acquired or leased facilities with other state agencies.

Each state agency shall provide a copy of its facilities needs plan report to the department of administration. The department of administration shall prepare a five (5) year statewide facilities needs plan incorporating the facilities needs plans of the state agencies and report such facilities needs in its annual budget hearings.

For purposes of this section, the term “state agency” shall mean all state departments, agencies and institutions, excluding state institutions of higher education. For purposes of this section, the term “facilities needs” shall mean the state agency’s need to own, operate or occupy real property and improvements including administrative office buildings, structures and parking lots, to assist it in its operation as a state agency. Facilities needs shall not include the ownership, operation or occupying of real property or improvements by a state agency where such ownership, operation or occupying is a function of the agency’s purpose, such as real property and improvements, other than administrative office buildings, structures and parking lots described above under the jurisdiction and control of the Idaho transportation department, the department of fish and game, the department of parks and recreation, the department of lands, and the department of water resources and water resource board.

The department may promulgate rules and prescribe necessary procedures to implement the provisions of this section.

History.

I.C., § 67-5708B, as added by 2000, ch. 301, § 1, p. 1032; am. 2006, ch. 205, § 1, p. 625.

STATUTORY NOTES

Cross References.

Department of fish and game, § 36-101 et seq.

Department of lands, § 58-101 et seq.

Department of parks and recreation, § 67-4218.

Department of water resources, § 42-1701 et seq.

Idaho transportation department, § 40-501 et seq.

Idaho water resource board, § 42-1732.

Amendments.

The 2006 amendment, by ch. 205, added “and the department of water resources and water resource board” to the end of the third paragraph.

Compiler’s Notes.

The bracketed insertion in the second sentence in the first paragraph was added by the compiler to correct the syntax of the sentence.

§ 67-5709. Management of state facilities. — (1) In addition to the authority granted by section 67-1603, Idaho Code, the director of the department of administration shall have exclusive control of the capitol mall properties identified in subsection (2) of this section and, where not otherwise established by law, multiagency facilities owned or leased by the state of Idaho. The department of administration shall have authority to promulgate rules relating to use of those properties, including the authority to promulgate rules requiring a permit for various uses of the properties. Violations of rules promulgated under this section shall be infractions. The director shall have authority to sue to enjoin any threatened or continuing violation of such rules.

(2) Except as otherwise provided by law, the capitol mall properties shall include state of Idaho lands and buildings, together with any appurtenant grounds and systems including, but not limited to, electrical, plumbing, sewer, water, heating, ventilation and air conditioning systems as well as geothermal systems and tunnels, located between blocks one (1) and one hundred thirty-six (136) as shown on the Boise City original townsite plat filed in the Ada County recorder's office in book 1 on page 1. Subject to the following, the capitol mall properties shall be identified in rules promulgated pursuant to this section:

(a) At a minimum, the capitol mall properties shall consist of the following grounds, buildings, improvements and real property in Boise, Idaho: Joe R. Williams (700 W. State street), Len B. Jordan (650 W. State street), Pete T. Cenarrusa (450 W. State street), Division of Public Works (502 N. 4th street), Alexander House (304 W. State street), State Library (325 W. State street), Secretary of State (450 N. 4th street), 954 Jefferson (954 W. Jefferson street), Capitol Annex (514 W. Jefferson street), Borah Building (304 N. 8th street), and Steunenberg Monument Park (intersection of Capitol boulevard and Bannock street), and the Idaho Supreme Court (451 W. State street); provided, that the Idaho supreme court may regulate uses at the Idaho supreme court building and its grounds.

(b) The parking facilities, including appurtenant grounds and systems, at the following locations in Boise, Idaho, shall also be within the capitol mall properties: West State street parking facility, occupying block 101 as shown on the Boise City original townsite plat; 3rd street and Washington street parking facility, occupying a portion of block 105 as shown on the Boise City original townsite plat; 6th street and Washington street parking facility, occupying a portion of block 96 as shown on the Boise City original townsite plat; 8th street and Jefferson street parking facility, occupying a portion of block 66 as shown on the Boise City original townsite plat; and 10th street and Jefferson parking facility, occupying a portion of block 68 as shown on the Boise City original townsite plat.

(c) The space within the interior of the capitol building shall be allocated and controlled as set forth in [section 67-1602, Idaho Code](#); provided however, that the executive and legislative departments may subject all or a part of such space to the rules promulgated pursuant to this section as set forth in subsection (3) of this section.

(3) Rules promulgated pursuant to this section shall apply to properties not described in subsection (1) of this section upon the request of the state of Idaho public entity owning or controlling the property. When such a request has been made, the property subject to the request shall be identified by the director of the department of administration in rules promulgated under this section. Violations of the rules adopted under this section shall be infractions. The director of the department of administration and the governing authority of the requesting entity shall have the authority to sue to enjoin any threatened or continuing violation of such rules. All state law enforcement personnel, any sheriff or deputy sheriff in a county in which the property is located and any police officer in a city in which the property is located shall have authority to enforce the rules for that property.

(4) Responsibility for law enforcement at the capitol mall properties is vested in the director of the Idaho state police. In coordination with the director of the Idaho state police, Ada County and the city of Boise are granted jurisdiction to enforce the laws of the state of Idaho, the ordinances of Ada County, the ordinances of the city of Boise and the rules promulgated pursuant to this section. The director of the department of administration, or his designee, shall be responsible for security at the

capitol mall properties and has the authority to contract with private contractors to provide security for persons and property at the capitol mall properties.

(5) The director of the department of administration may pay personnel costs and operating expenditures incurred in the operation and management of the capitol mall properties and the multiagency facilities from the rents received therefrom. In addition to funding annual operating costs, rental rates at multiagency facilities shall include a provision sufficient to provide for the long-term maintenance and upkeep of the facilities, subject to the review and approval of the permanent building fund advisory council. Proceeds accruing from such rental contracts and lease agreements after payment of personnel costs and operating expenditures which are in excess of two hundred thousand dollars (\$200,000) at the end of the fiscal year shall be deposited to the credit of the permanent building fund and accounted for separately for each property. Proceeds from the rental of parking spaces at the capitol mall shall be deposited upon receipt to the credit of the permanent building fund. Said proceeds shall not be expended without an appropriation and shall only be appropriated for the security, maintenance and upkeep of the property generating the proceeds.

(6) Nothing contained in this section shall be deemed to give the department of administration control or management over the garden level, the first, third or fourth floors of the state capitol building, which are vested with the legislative branch of government.

History.

I.C., § 67-5709, as added by 1974, ch. 34, § 2, p. 988; am. 1981, ch. 186, § 1, p. 331; am. 1998, ch. 149, § 3, p. 518; am. 2012, ch. 194, § 1, p. 523; am. 2018, ch. 127, § 1, p. 266; am. 2018, ch. 180, § 1, p. 393.

STATUTORY NOTES

Cross References.

Director of Idaho state police, § 67-2901.

Permanent building fund, § 57-1101.

Punishment for infraction, § 18-113A.

Amendments.

The 2012 amendment, by ch. 194, designated the existing provisions as subsection (5) and added subsections (1) through (4) and (6).

This section was amended by two 2018 acts which appear to be compatible and have been compiled together.

The 2018 amendment, by ch. 180, in subsection (1), added “where not otherwise established by law, multiagency facilities owned or leased by the state of Idaho” at the end of the first sentence and, in the second sentence, added “The department of administration” at the beginning and substituted “properties” for “capital mall properties” at the end; substituted “described in subsection (1) of this section” for “within the capitol mall properties” in the first sentence in subsection (3); in subsection (5), deleted “constructed through the state building authority” preceding “from the rents” in the first sentence, added “and accounted for separately for each property” at the end of the second sentence, and substituted “property generating the proceeds” for “capitol mall properties” in the last sentence.

The 2018 amendment, by ch. 127, in subsection (5), inserted the second sentence, and substituted “building fund” for “building account” at the end of the third and fourth sentences; and made minor stylistic changes.

Compiler’s Notes.

Section 2 of S.L. 2012, ch. 194 provided: “Within thirty (30) days of the effective date of this act [March 30, 2012], the director of the Department of Administration shall promulgate rules pertaining to the use of the Capitol Mall properties; provided however, such rules may not take effect until thirty (30) days after the effective date of this act.”

The street addresses enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1981, ch. 186 declared an emergency. Approved March 31, 1981.

Section 3 of S.L. 2012, ch. 194 declared an emergency. Approved March 30, 2012.

§ 67-5709A. Sale, transfer or disposition of state administrative facilities. — The provisions of sections 58-331 through 58-335, Idaho Code, shall not apply to state administrative facilities in the custody, or control of the state of Idaho. When a state agency declares that a state administrative facility is not needed or is unsuitable for its purposes, custody and control shall be transferred to the state board of examiners, which shall immediately transfer authority for the disposition of the property to the department of administration which shall send a notice to all state agencies and institutions that the property is available for other state use. Any state agency interested in leasing or buying the property shall notify the department of administration within the time the department specifies.

If no state agency or institution is interested, the department shall obtain an appraisal and commence procedures to sell the property for the highest price possible. All proceeds from the sale or lease of administrative facilities acquired by the department of administration pursuant to this section, other than proceeds required by law to be deposited in a special fund, less the department of administration's cost of selling or leasing, shall be deposited into the permanent building fund for the purpose of holding such proceeds. Such proceeds in the permanent building fund acquired pursuant to this section may be expended pursuant to appropriation.

As used in this section, "state administrative facility" shall mean any real property and improvements, including administrative office buildings, structures and parking lots, used by any state agency to assist it in its operation as a state agency. State administrative facilities shall not include the real property or improvements owned or occupied by a state agency where such ownership, operation or occupying is a function of the agency's purpose, such as real property and improvements, other than the administrative office buildings, structures and parking lots described above, under the jurisdiction and control of the Idaho transportation department, the department of fish and game, the department of parks and recreation and the department of lands.

History.

I.C., § 67-5709A, as added by 2000, ch. 300, § 1, p. 1031.

STATUTORY NOTES

Cross References.

Department of fish and game, § 36-101 et seq.

Department of lands, § 58-101 et seq.

Department of parks and recreation, § 67-4218.

Idaho transportation department, § 40-501 et seq.

Permanent building fund, § 57-1101.

State board of examiners, § 67-2001 et seq.

Idaho Code § 67-5709B

§ 67-5709B. Development of facilities. [Null and void.]

Null and void, pursuant to S.L. 2013, ch. 337, § 2, effective June 30, 2014.

History.

I.C., § 67-5709B, as added by 2013, ch. 337, § 1, p. 876.

§ 67-5710. Permanent building fund advisory council — Approval of use of fund — Duties of administrator of public works. — There is hereby created in the division of public works a permanent building fund advisory council which shall be appointed by the governor. This council shall be composed of one (1) member of the senate, one (1) member of the house of representatives, a citizen engaged in the contracting business, a citizen engaged in the banking business, and a citizen who is a member of the business community not engaged in contracting or banking. The senate member and house of representative member shall be appointed for a fixed term of two (2) years. All other council members shall be appointed for a fixed term of three (3) years. The terms of office of members of the council holding office prior to July 1, 1996, shall expire on the following dates: contracting business member on July 1, 1996; senate member and house of representative member on December 1, 1996; business community member on July 1, 1997; and banking member on July 1, 1998. On or after July 1, 1996, the governor shall appoint members of the council as terms of existing members expire. All members of the council shall serve at the pleasure of the governor. The administrator of public works and the responsible heads of the agencies for which appropriations for construction, renovations, remodelings or repairs are made pursuant to chapter 11, title 57, Idaho Code, shall consult, confer and advise with the permanent building fund advisory council in connection with all decisions concerning the administration of these appropriations and the planning and construction or execution of work or works pursuant thereto. The approval of the permanent building fund advisory council shall be a condition precedent to the undertaking of planning or construction.

The administrator of public works is hereby directed to work in close cooperation with the responsible heads of institutions and agencies for which appropriations are made herein and no building proposals shall be approved by the administrator of public works nor any planning or work undertaken by that officer pursuant to these appropriations without the prior approval of the responsible chief officer of the institutions and agencies for whom appropriations are made herein.

History.

I.C., § 67-5710, as added by 1974, ch. 34, § 2, p. 988; am. 1996, ch. 200, § 1, p. 621.

STATUTORY NOTES

Cross References.

Permanent building fund, § 57-1101.

§ 67-5710A. Requirement of plans and specification approval by permanent building fund advisory council and delegation of project oversight by the administrator for the division of public works. —

(1)(a) Except as set forth in this section, an existing public works may not be altered, repaired, constructed or improved on property owned or occupied by any state institution, department, commission, board or agency, if the estimated cost of work exceeds the limit established in [section 67-5711, Idaho Code](#), without regard to source of funding, until the location, design, plans and specifications are approved by the permanent building fund advisory council and the project supervised by the division of public works or its designee.

(b) Facilities to be built with funds under the control of a nonstate entity, and owned or occupied by state entities, must have plans and specifications prepared, and all plans and specifications must be reviewed and approved by the permanent building fund advisory council prior to the advertising, bidding, construction and/or negotiation for construction of the facilities.

(c) Plans and specifications submitted for approval shall comply with public works statutes, life safety and building codes, and other applicable codes and regulations. The plans and specifications must also comply with any guidelines or procedures for design and construction adopted by the division of public works and approved by the permanent building fund advisory council.

(d) The following are exempt from the requirement of prior approval of location, design, plans, and specifications in this section:

(i) Emergency public works contracts issued pursuant to [section 67-5711B, Idaho Code](#); and

(ii) Institutions and agencies exempt from the authority of the department of administration pursuant to [section 67-5711, Idaho Code](#).

(2)(a) The administrator for the division of public works may delegate control over design, construction and all other aspects of a public works or maintenance project that costs less than one hundred fifty thousand

dollars (\$150,000) to agencies of state government on a project-by-project basis, if a responsible party of the state agency requests that delegation in writing and the permanent building fund advisory council approves the delegation.

(i) The state agency to whom control is delegated shall assume all responsibility for project budgets and shall receive funds appropriated for the project upon application and approval by the permanent building fund advisory council.

(ii) Delegation of project control does not exempt the state agency from complying with public works statutes, life safety and building codes or other applicable codes and regulations. The state agency also must comply with any guidelines or procedures for design and construction adopted by the division of public works and the permanent building fund advisory council.

(iii) State agencies that receive delegated projects may not have access to permanent building fund advisory council contingency funds unless approved by the permanent building fund advisory council or authorized by appropriation.

(iv) Prior written approval from the administrator must be granted for any public works utilizing sole source or limited competition. No agency will be delegated the ability to declare an emergency as defined in [section 67-5711B, Idaho Code](#).

(v) The permanent building fund advisory council may elect to audit any project for compliance with applicable codes and policies.

(vi) The delegated state agency will use standard documents for professional services contracts and for construction contracts as adopted by the division of public works.

(vii) Delegation is subject to cancellation by the administrator for the division of public works with the concurrence of the permanent building fund advisory council.

History.

[I.C., § 67-5710A](#), as added by 1991, ch. 136, § 1, p. 318; am. 1996, ch. 148, § 1, p. 484; am. 2020, ch. 45, § 1, p. 110.

STATUTORY NOTES

Cross References.

Division of public works, § 67-5705.

Permanent building fund advisory council, § 67-5710.

Amendments.

The 2020 amendment, by ch. 45, in subsection (1), substituted “Except as set forth in this section” for “Unless an emergency exists as defined in [section 67-5711B, Idaho Code](#)” at the beginning and deleted “an except for those institutions and agency exemptions listed in [section 65-5711, Idaho Code](#)” following “[section 67-5711, Idaho Code](#)” near the middle of paragraph (a) and added paragraphs (c) and (d).

Compiler’s Notes.

As enacted by S.L. 1991, ch. 136, § 1, subsection (2) of this section has a paragraph (a), but not a paragraph (b).

§ 67-5710B. Definitions. — As used in this chapter:

(1) “Preventive maintenance” means:

(a) Corrective repairs or replacements used for existing state-owned, or state operated facilities, which result from a systematic program in which wear, tear, and change are anticipated and continuous corrective actions are required to be taken to ensure peak efficiency and to minimize deterioration. It includes systematic inspection, adjustment, lubrication, replacement of components, as well as performance testing and analysis; and

(b) Repairs and replacements with an estimated useful life of less than five (5) years; and

(c) Repairs and replacements which are funded in the state agency’s operating budget; and

(d) Repairs and replacements which can be accomplished by the agency’s existing physical plant staff; and

(e) Repairs and replacements which do not require the services of architects, engineers, and other professionally licensed consultants to investigate conditions, prepare recommendations for corrective action, prepare plans and specifications, and supervise the execution of corrective projects.

(2) “Public works” mean:

(a) Any new building, alteration, repair, demolition or improvement of any land, building, structure including utilities, or remodeling or renovation of existing buildings, or other physical facilities, to make physical changes necessitated by changes in the program, to meet standards required by applicable codes, to correct other conditions hazardous to health and safety of persons which are not covered by codes, or to effect a permanent improvement to the facility for any reason including aesthetics or appearance;

(b) Site improvement or developments which constitute permanent improvements to real property;

(c) Purchase and installation of fixed equipment necessary for the operation of new, remodeled, or renovated buildings and other physical facilities for the conduct of programs initially housed therein to include any equipment that is made a permanent fixture of the building; and

(d) Purchase of the services of architects, engineers, and other consultants to prepare plans, program documents, life cycle cost studies, energy analysis, and other studies associated with any new building, alteration, repair, demolition or improvement and to supervise the construction or execution of such projects.

History.

I.C., § 67-5710B, as added by 1991, ch. 133, § 1, p. 292.

§ 67-5711. Construction, alteration, equipping, furnishing and repair of public buildings and works. — The director of the department of administration, or his designee, of the state of Idaho, is authorized and empowered, subject to the approval of the permanent building fund advisory council, to provide or secure all plans and specifications for, to let all contracts for, and to have charge of and supervision of the construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance of any and all buildings, improvements of public works of the state of Idaho, the cost of which construction, alteration, equipping and furnishing, repair, maintenance other than preventive maintenance exceeds the sum of one hundred thousand dollars (\$100,000) for labor, materials and equipment, which sum shall exclude design costs, bid advertising and related bidding expenses, provided, that the director or his designee, and permanent building fund advisory council shall, in the letting of contracts under this section, comply with the procedure for the calling of bids provided in section 67-5711C, Idaho Code; provided, however, that this section shall not apply to the construction, alteration, equipping or furnishing or repair or maintenance other than preventive maintenance of public buildings under the jurisdiction and control of the board of regents of the university of Idaho; provided further, that the bidding procedures required by this section and section 67-5711C, Idaho Code, shall not apply to performance contracts as provided in section 67-5711D, Idaho Code; provided further, that public works for the Idaho transportation department, the department of fish and game, the department of parks and recreation, the department of lands, and the department of water resources and water resource board, except for administrative office buildings and all associated improvements, are exempt from the provisions of this section that relate to the administration and review of such projects by the director of the department of administration or his designee and by the permanent building fund advisory council. This exemption shall not relieve the Idaho transportation department, the department of fish and game, the department of parks and recreation, the department of lands, and the department of water resources and water resource board in the letting of contracts for public works, from complying with the procedures of section 67-5711C, Idaho Code, related to the advertising and bidding for contracts.

The permanent building fund advisory council may adopt rules consistent with existing law, including rules for a program of inspection and maintenance, to carry out the provisions of this chapter.

History.

I.C., § 67-5711, as added by 1974, ch. 34, § 2, p. 988; am. 1976, ch. 26, § 1, p. 61; am. 1988, ch. 369, § 1, p. 1089; am. 1991, ch. 133, § 2, p. 292; am. 1991, ch. 134, § 1, p. 294; am. 1991, ch. 164, § 1, p. 393; am. 1996, ch. 148, § 2, p. 484; am. 2001, ch. 213, § 1, p. 839; am. 2005, ch. 213, § 39, p. 637; am. 2006, ch. 205, § 2, p. 625.

STATUTORY NOTES

Cross References.

Board of regents of university of Idaho, § 33-2802.

Department of fish and game, § 36-101 et seq.

Department of lands, § 58-101 et seq.

Department of parks and recreation, § 67-4218.

Department of water resources, § 42-1701 et seq.

Idaho transportation department, § 40-501 et seq.

Idaho water resources board, § 42-1732.

Amendments.

This section was amended by three 1991 acts which appear to be compatible and have been compiled together.

The 1991 amendment, by ch. 133, § 2, in the first sentence added “advisory” preceding “council” in two places; substituted a comma for “and” following “equipping and furnishing” the first time it appears; added “, maintenance other than preventive maintenance” preceding “of any and all buildings”; substituted “, repair, maintenance other than preventive maintenance” for “or repair” preceding “exceeds the sum”; added “or maintenance other than preventive maintenance” preceding “of public buildings under the”; in the last sentence added “advisory” following “building fund” and deleted “preventive” following “inspection and”.

The 1991 amendment, by ch. 134, § 1, in the first sentence added “advisory” following “building fund” in two places; substituted “fifteen thousand dollars (\$15,000) for labor, materials and equipment, which sum shall exclude design costs, bid advertising and related bidding expenses” for “five thousand dollars (\$5,000)”; deleted “and” following “department of fish and game” and added “and the department of lands,” following “parks and recreation”; in the second sentence deleted “and” preceding “the department of parks” and added “and the department of lands” following “parks and recreation”.

The 1991 amendment, by ch. 164, § 1, in the first sentence added “advisory” following “building fund” in two places and in the first and second sentences substituted “67-5711C” for “67-5718”.

The 2006 amendment, by ch. 205, twice inserted “and the department of water resources and water resource board” near the end.

CASE NOTES

Ex Parte Young Jurisdiction.

As the person “authorized and empowered to provide or secure all plans and bid specifications for construction, alteration and repair of public works undertaken by the state of Idaho” in a manner that complies with all relevant state laws, and as the person responsible for ensuring that all bid specifications and other procurement documents issued by the division of public works comply with state law, the administrator for the division of public works, Idaho department of administration, “gives effect” to the Open Access to Work Act in ways that satisfied *Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 2d 714 (1908). He was therefore not immune from being sued. *Idaho Bldg. & Constr. Trades Council v. Wasden*, 32 F. Supp. 3d 1143 (D. Idaho 2014).

OPINIONS OF ATTORNEY GENERAL

Scope of Authority.

Except as to certain exempt entities such as the University of Idaho, jurisdiction of projects which cost more than \$5,000 [now \$100,000] resides in the department of administration, division of public works. The

procedure for calling of bids set forth in § 67-5718 must be used as to all contracts let unless an emergency is declared as provided in § 67-5711B. OAG 89-2.

The statutes do not define jurisdiction of the department of administration, division of public works, in terms of maintenance versus nonmaintenance projects. Rather, department of administration jurisdiction depends upon whether the project involves construction, alteration, equipping and furnishing, or repair of buildings or improvements of public works. OAG 89-2.

Installation of a \$7,000 pump in a state building would involve equipping the building, and the department of administration would have jurisdiction. OAG 89-2.

In-house Maintenance.

When the cost of a project including materials exceeds \$5,000 [now \$100,000], the department of administration, division of public works, may choose to use in-house maintenance personnel on the project. OAG 89-2.

If a project is within the jurisdiction of the department of administration, the department is empowered to let all contracts which are entered into in connection with the project and is required to follow statutory bid procedures when contracting. However, the statute does not prohibit the department of administration from using in-house personnel in performance of some or all of the labor on a public works project. OAG 89-2.

No Local Authority.

In light of the promulgation of uniform building and safety codes by the legislature, the authority granted to the department of administration and the department of labor and industrial services, and the directive by the governor that such codes will apply to state projects, the state's authority over its projects is complete. There is simply no basis for local infringement by a municipality. OAG 90-6.

The provisions of §§ 54-1001B and 54-2620 do not empower the city to require the state or its contractors to obtain electrical and plumbing permits; therefore, a city does not have the authority to require the state of Idaho to obtain building permits when building or remodeling state buildings within the city. OAG 90-6.

§ 67-5711A. Design-build contracting authorized. — Notwithstanding any other provisions of law to the contrary, the director of the department of administration, or his designee, is authorized and empowered, subject to the approval of the permanent building fund council [permanent building fund advisory council], to employ the use of the design-build method of construction in the letting of any and all contracts for the construction, alteration, equipping, furnishing and repair of any and all buildings, improvements, or other public works of the state of Idaho. For the purposes of this section, a design-build contract is a contract between the state of Idaho and a nongovernmental party in which the nongovernmental party contracting with the state of Idaho agrees to both design and build the structure, roadway, or other items specified in the contract.

History.

I.C., § 67-5711A, as added by 1987, ch. 283, § 1, p. 594.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the first sentence was added by the compiler to correct the name of the referenced agency. See § 67-5710.

Effective Dates.

Section 3 of S.L. 1987, ch. 283 declared an emergency. Approved April 3, 1987.

§ 67-5711B. Emergency contracting authorized division of public works. — The director of the department of administration, the administrator of the division of public works, or a designee of either official may make or authorize others to make emergency public works contracts when there exists a threat to public health, welfare, or safety under emergency conditions; provided that such emergency public works contracts shall be made with such competition as is practicable under the circumstances. The administrator may declare an emergency when one (1) or more of the following conditions exist: an imminent life-threatening environment; or an imminent threat to property; or an imminent loss of significant state resources. The administrator may also waive the requirements of section 67-2309, Idaho Code, regarding written plans and specifications. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file.

History.

I.C., § 67-5711B, as added by 1988, ch. 165, § 1, p. 295.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1988, ch. 165 declared an emergency. Approved March 25, 1988.

OPINIONS OF ATTORNEY GENERAL

Scope of Authority.

Except as to certain exempt entities such as the University of Idaho, jurisdiction of projects which cost more than \$5,000 [now \$100,000] resides in the department of administration, division of public works. The procedure for calling of bids set forth in § 67-5718 must be used as to all contracts let unless an emergency is declared as provided in § 67-5711B. OAG 89-2.

Inmate Labor.

Work performed by inmate labor on public works projects is under the supervision of the administrator of the division of public works and, thus, must be done in compliance with written plans and specifications prepared by licensed architects and engineers. The only exception is work performed under the supervision of the division of public works pursuant to a declared emergency under § 67-5711B. OAG 89-2.

§ 67-5711C. Construction of public projects — Competitive sealed bidding. — (1) All construction contracts for public works shall be awarded to the lowest responsible and responsive bidder, subject to the provisions of section 59-1015, Idaho Code, after receipt of competitive sealed bidding except as otherwise provided in sections 67-5711B, 67-5711D and 67-5713, Idaho Code.

(2) An invitation for bids shall be issued and shall include a project description and all contractual terms and conditions applicable to the public works.

(3) Adequate public notice of the invitation for bids shall be given at least fourteen (14) days prior to the date set forth therein for the opening of bids. Such notice shall include publication at least fourteen (14) days prior to bid opening in a newspaper of general circulation in the area where the work is located.

(4) When prequalification is deemed by the department and by the respective state agency to be in the best interest of the state, competitive bidding procedures shall be open only to licensed public works contractors that meet preliminary supplemental qualifications. The solicitation for bids in a prequalified bidder public works project shall consist of two (2) stages, an initial stage for identifying prequalified contractors, either prime or specialty contractors, followed by a stage during which bid prices will be accepted only from prequalified contractors. Notice of the prequalification stage shall be given in the same manner that notice of open competitive bidding is provided. Prequalification standards must be premised upon demonstrated technical competence, experience constructing similar facilities, prior experience with the state, past performance related to quality, workmanship and timeliness, reliability, safety record, available nonfinancial resources, equipment and personnel as they relate to the subject project, and overall performance history based upon a contractor's entire body of work. Any request for qualifications must include the standards for evaluating the qualifications of prospective bidders. Licensed contractors desiring to be prequalified to bid on a project must submit a written response to a request for qualifications. After a review of

qualification submittals, licensed contractors that meet the prequalification standards shall be so notified, and licensed contractors that do not meet the prequalification standards shall also be so notified. Thereafter, bids may be solicited from contractors that meet the prequalification standards. The department may promulgate rules or develop procedures to implement the prequalification process.

(5) Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid and such other relevant information as may be specified by rules, together with the name of each bidder, shall be entered on a record and the record shall be open to public inspection. After the time of the award, all bids and bid documents shall be open to public inspection in accordance with the provisions of chapter 1, title 74 and [section 67-9215, Idaho Code](#).

(6) With respect to a project having a written cost estimate of greater than twenty-five thousand dollars (\$25,000) but less than the public works limit established in [section 67-5711, Idaho Code](#), the agency, if it does not perform the work with existing physical plant staff, must award a written contract to the lowest responsible and responsive bidder after soliciting at least three (3) documented informal bids from contractors licensed in Idaho to perform public works contracts, if reasonably available. Adequate public notice of the invitation for informal bids shall be given at least seven (7) days prior to the date set forth therein for the receipt of the informal bids. Such notice may include publication at least seven (7) days prior to bid opening in a newspaper of general circulation in the area where the work is located; or the agency may advertise the invitation for bids in appropriate trade journals, and otherwise notify persons believed to be interested in the award of a contract. Informal bids must be submitted by the contractor in writing in response to a prepared written document describing the project's scope of work in sufficient detail so as to enable a contractor familiar with such work to prepare a responsible bid. Nothing herein exempts an agency from the responsibility of utilizing formal plans and specifications if the work involves the public health or safety as described in chapters 3 and 12, title 54, Idaho Code. The agency must document receipt of the informal bids in the project file.

(7) Any personal property including goods, parts, supplies and equipment which is to be supplied or provided by a state agency for use in any public

work, project, or preventive maintenance programs, whether the public work, project, or preventive maintenance program is constructed, undertaken or performed by agency in-house personnel, or by delegation pursuant to [section 67-5710A, Idaho Code](#), or otherwise provided or supplied by the agency to a contractor, the personal property, goods, parts, supplies or equipment supplied or provided by the agency must be purchased or procured by the agency through the division of purchasing in accordance with the Idaho Code.

History.

[I.C., § 67-5711C](#), as added by 1991, ch. 164, § 2, p. 393; am. 1992, ch. 136, § 1, p. 424; am. 2001, ch. 213, § 2, p. 839; am. 2005, ch. 213, § 40, p. 637; am. 2010, ch. 345, § 1, p. 902; am. 2015, ch. 141, § 178, p. 379; am. 2016, ch. 289, § 15, p. 793; am. 2018, ch. 119, § 1, p. 254.

STATUTORY NOTES

Cross References.

Division of purchasing, § 67-9204.

Amendments.

The 2010 amendment, by ch. 345, in subsection (4), in the first sentence, inserted “by the department and by the respective state agency to be,” in the fourth sentence, inserted “past performance (related to quality, workmanship and timeliness), reliability, safety record” and in the sixth sentence, inserted “so” and added “and licensed contractors that do not meet the prequalification standards shall also be so notified.”

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74, and section 67-5725” for “sections 9-337 through 9-347 and 67-5725” for subsection (5).

The 2016 amendment, by ch. 289, substituted “67-9215” for “67-5725” near the end of subsection (5).

The 2018 amendment, by ch. 119, inserted “subject to the provisions of [section 59-1015, Idaho Code](#)” in subsection (1).

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L. 1992, ch. 136 declared an emergency. Approved April 2, 1992.

Section 2 of S.L. 2010, ch. 345 declared an emergency. Approved April 12, 2010.

CASE NOTES

Low Responsible Bidder.

Bid documents as a whole showed that the determination of which bidder constituted the low responsible bidder would take into account the total price of the number of classroom units that the state determine it could purchase; the bid documents violated neither § 67-2309 nor § 67-5711C. [SE/Z Constr., L.L.C. v. Idaho State Univ., 140 Idaho 8, 89 P.3d 848 \(2004\).](#)

§ 67-5711D. Energy savings performance contracts. — (1) Definitions.
As used in this section:

(a) “Cost-savings measure” means any facility improvement, repair or alteration to an existing facility, or any equipment, fixture or furnishing to be added or used in any existing facility that is designed to reduce energy consumption and energy operating costs or increase the energy efficiency of facilities for their appointed functions that are cost effective. “Cost-savings measure” includes, but is not limited to, one (1) or more of the following:

- (i) Procurement of low-cost energy supplies of all types, including electricity, natural gas and water;
- (ii) Insulating the building structure or systems in the building;
- (iii) Storm windows or doors, caulking or weather stripping, multiglazed windows or door systems, heat-absorbing or heat-reflective glazed and coated window and door systems, additional glazing, reductions in glass area or other window and door system modifications that reduce energy consumption;
- (iv) Automated or computerized energy control systems;
- (v) Heating, ventilation or air conditioning system modifications or replacements;
- (vi) Replacing or modifying lighting fixtures to increase the energy efficiency of the lighting system;
- (vii) Energy recovery systems;
- (viii) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
- (ix) Installing new or modifying existing day lighting systems;
- (x) Installing or modifying renewable energy and alternate energy technologies;

(xi) Building operation programs that reduce energy costs including, but not limited to, computerized programs, training and other similar activities;

(xii) Steam trap improvement programs that reduce energy costs;

(xiii) Devices that reduce water consumption; and

(xiv) Any additional building infrastructure improvements that produce energy cost savings, significantly reduce energy consumption or increase the energy efficiency of the facilities for their appointed functions and are in compliance with all applicable state building codes.

(b) “Director” means the director of the department of administration or the director’s designee.

(c) “Energy cost savings” means any expenses that are eliminated or avoided on a long-term basis as a result of equipment installed or modified, or services performed by a qualified energy service company or a qualified provider, but does not include merely shifting personnel costs or similar short-term cost savings.

(d) “Financial grade energy audit” means a comprehensive building energy systems audit performed by a professional engineer licensed in the state of Idaho for the purpose of identifying and documenting feasible energy and resource conservation measures and cost-savings factors.

(e) “Performance contract” means a contract between the director or the public entity and a qualified provider or a qualified energy service company for evaluation, recommendation and implementation of one (1) or more cost-savings measures. A performance contract may be structured as either:

(i) A guaranteed energy savings performance contract, which shall include, at a minimum, the design and installation of equipment and, if applicable, operation and maintenance of any of the measures implemented. Guaranteed annual savings must meet or exceed the total annual contract payments made by the director or the user agency or the public entity for such contract, including financing charges to be incurred over the life of the contract; or

- (ii) A shared savings contract, which shall include provisions mutually agreed upon by the director and the qualified provider or qualified energy service company as to the rate of payments based upon energy cost savings and a stipulated maximum energy consumption level over the life of the contract.
- (f) “Person” means an individual, corporation, partnership, firm, association, limited liability company, limited liability partnership or other such entity as recognized by the state of Idaho.
- (g) “Public entity” means the cities, counties and school districts or any political subdivision within the state of Idaho.
- (h) “Qualified energy service company” means a person with a record of established projects or with demonstrated technical, operational, financial and managerial capabilities to implement performance contracts and who currently holds an Idaho public works contractor license appropriate for the work being performed.
- (i) “Qualified provider” means a person who is experienced in the design, implementation and installation of energy efficiency and facility improvement measures, who has the ability to secure necessary financial measures to support energy savings guarantees and the technical capabilities to ensure such measures generate energy cost savings, and who currently holds an Idaho public works contractor license appropriate for the work being performed.

(2) Performance contracts. The director of the department of administration, subject to the approval of the permanent building fund advisory council, or any Idaho public entity may enter into a performance contract with a qualified provider or qualified energy service company to reduce energy consumption or energy operating costs. Cost-savings measures implemented under such contracts shall comply with all applicable state and local building codes.

(3) Requests for qualifications. The director of the department of administration or the public entity shall request qualifications from qualified providers and qualified energy service companies inviting them to submit information describing their capabilities in the areas of:

- (a) Design, engineering, installation, maintenance and repairs associated with performance contracts;
- (b) Experience in conversions to a different energy or fuel source, so long as it is associated with a comprehensive energy efficiency retrofit;
- (c) Postinstallation project monitoring, data collection and reporting of savings;
- (d) Overall project experience and qualifications;
- (e) Management capability;
- (f) Ability to assess the availability of long-term financing;
- (g) Experience with projects of similar size and scope; and
- (h) Other factors determined by the director or the public entity to be relevant and appropriate relating to the ability of the qualified provider or qualified energy service company to perform the project.

(4) Notice. Adequate public notice of the request for qualifications shall be given at least fourteen (14) days prior to the date set forth therein for the opening of the responses to the request for qualifications. Such notice may be provided electronically or by publication in a newspaper of general circulation in the area where the work is located.

(5) Public inspection. All records of the department or an agency or the public entity relating to the award of a performance contract shall be open to public inspection in accordance with the provisions of chapter 1, title 74, and [section 67-9215, Idaho Code](#).

(6) Award of performance contract.

(a) The director or public entity shall select up to three (3) qualified providers or qualified energy service companies who have responded to the request for qualifications. Factors to be considered in selecting the successful qualified provider or qualified energy service company shall include, but not be limited to:

- (i) Fee structure;
- (ii) Contract terms;
- (iii) Comprehensiveness of the proposal and cost-savings measures;

(iv) Experience of the qualified provider or qualified energy service company;

(v) Quality of the technical approach of the qualified provider or qualified energy service company; and

(vi) Overall benefits to the state or the public entity.

(b) Notwithstanding the provisions of [section 67-5711C, Idaho Code](#), the director or the public entity may, following the request for qualifications and the expiration of the specified notice period, award the performance contract to the qualified provider or qualified energy service company which best meets the needs of the project and whose proposal may or may not represent the lowest cost among the proposals submitted pursuant to this section.

(c) Upon award of the performance contract, the successful qualified provider or qualified energy service company shall prepare a financial grade energy audit which, upon acceptance by the director or the public entity, shall become a part of the final performance contract.

(7) Installment payment and lease-purchase agreements. Pursuant to this section, the director or the public entity may enter into a performance contract, payments for which shall be made by the user agency or public entity. Such performance contracts may be financed as installment payment contracts or lease-purchase agreements for the purchase and installation of cost-savings measures. Financing implemented through another person other than the qualified provider or qualified energy service company is authorized.

(8) Terms of performance contract.

(a) Each performance contract shall provide that all payments between parties, except obligations upon termination of the contract before its expiration, shall be made over time and that the objective of such performance contract is the implementation of cost-savings measures and energy cost savings.

(b) A performance contract, and payments provided thereunder, may extend beyond the fiscal year in which the performance contract becomes effective, subject to appropriation by the legislature or by the public entity, for costs incurred in future fiscal years. The performance contract

may extend for a term not to exceed twenty-five (25) years. The permissible length of the contract may also reflect the useful life of the cost-savings measures.

(c) Performance contracts may provide for payments over a period of time not to exceed deadlines specified in the performance contract from the date of the final installation of the cost-savings measures.

(d) Performance contracts entered pursuant to this section may be amended or modified, upon agreement by the director or the public entity and the qualified provider or qualified energy service company, on an annual basis.

(9) Monitoring and reports. During the term of each performance contract, the qualified provider or qualified energy service company shall monitor the reductions in energy consumption and cost savings attributable to the cost-savings measures installed pursuant to the performance contract and shall annually prepare and provide a report to the director or the public entity documenting the performance of the cost-savings measures.

History.

I.C., § 67-5711D, as added by 2001, ch. 213, § 3, p. 839; am. 2004, ch. 15, § 1, p. 12; am. 2008, ch. 366, § 1, p. 1001; am. 2015, ch. 141, § 179, p. 379; am. 2016, ch. 289, § 16, p. 793.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 366, in the first sentence in the introductory paragraph in paragraph (1)(a), inserted “to an existing facility” and “existing”; and at the ends of paragraphs (1)(h) and (1)(i), added “appropriate for the work being performed.”

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74, and section 67-5725” for “sections 9-337 through 9-347 and 67-5725” in subsection (5).

The 2016 amendment, by ch. 289, substituted “67-9215” for “67-5725” at the end of subsection (5).

Idaho Code § 67-5711E

§ 67-5711E. Legislative intent — Capitol building projects — Construction manager at-risk services. [Null and void.]

Null and void, pursuant to S.L. 2006, ch. 454, § 2, effective June 30, 2010.

History.

I.C., § 67-5711E, as added by 2006, ch. 454, § 1, p. 1346.

Idaho Code § 67-5711F

§ 67-5711F. Capitol building projects — Chapter 10, title 44, Idaho Code, inapplicable. [Null and void.]

Null and void, pursuant to S.L. 2008, ch. 54, § 2, effective June 30, 2010.

History.

I.C., § 67-5711F, as added by 2008, ch. 54, § 1, p. 137.

§ 67-5712. Projection of building requirements report. — The permanent building fund council [permanent building fund advisory council] and the director of the department of administration works shall on or before September 1 next preceding each regular session of the legislature prepare and submit to the governor a projection of building requirements of all institutions and agencies of Idaho. Such projection shall include new buildings, maintenance and repair of existing state owned buildings.

History.

I.C., § 67-5712, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion near the beginning of the section was added by the compiler to correct the name of the referenced agency. See § 67-5710.

§ 67-5713. Construction and alteration of state correctional facilities.

— The administrator of the division of public works is authorized and empowered, subject to the approval of the permanent building fund advisory council, to use appropriated funds or other fund sources to construct or alter, either in whole or in part, state owned correctional facilities by inmate labor for the purpose of providing meaningful work and rehabilitation programs for inmates confined therein, or to have such construction accomplished by the competitive bid process as authorized by section 67-5711, Idaho Code, whichever the permanent building fund advisory council deems most appropriate. Further providing that no construction or alteration by inmate labor shall be authorized, unless plans and specifications for such construction have been accomplished by a licensed architect or engineer appointed at the direction of the council, and such final plans and specifications approved by the council. Further providing that such construction or alteration shall be performed under the direct charge and supervision of the administrator of the division of public works.

History.

I.C., § 67-5713, as added by 1978, ch. 375, § 2, p. 981.

STATUTORY NOTES

Prior Laws.

Former § 67-5713, which comprised I.C., § 67-5713, as added by 1974, ch. 34, § 2, p. 988 was repealed by S.L. 1978, ch. 375, § 1.

Effective Dates.

Section 3 of S.L. 1978, ch. 375 declared an emergency. Approved March 29, 1978.

OPINIONS OF ATTORNEY GENERAL

Inmate Labor.

Inmate labor may be used in public works projects only when the work is performed in accordance with this section. OAG 89-2.

Work performed by inmate labor on public works projects is under the supervision of the administrator of the division of public works and, thus, must be done in compliance with written plans and specifications prepared by licensed architects and engineers. The only exception is work performed under the supervision of the division of public works pursuant to a declared emergency under § 67-5711B. OAG 89-2.

§ 67-5714. Division of purchasing. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see § 67-9204.

History.

I.C., § 67-5714, as added by 1974, ch. 34, § 2, p. 988; am. 2015, ch. 244, § 58, p. 1008.

§ 67-5715. Purpose of act. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see § 67-9202.

History.

I.C., § 67-5715, as added by 1975, ch. 254, § 2, p. 686.

STATUTORY NOTES

Prior Laws.

Former § 67-5715, which comprised S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5716. Definitions. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see § 67-9203.

History.

I.C., § 67-5716, as added by 1975, ch. 254, § 2, p. 686; am. 1994, ch. 180, § 221, p. 420; am. 1996, ch. 198, § 1, p. 616; am. 2000, ch. 316, § 1, p. 1064; am. 2001, ch. 36, § 1, p. 55; am. 2010, ch. 286, § 1, p. 766; am. 2015, ch. 290, § 1, p. 1162.

STATUTORY NOTES

Cross References.

Public utilities commission, § 61-201 et seq.

Prior Laws.

Former § 67-5716, which comprised **I.C., § 67-5716**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5717. Powers and duties of the administrator of the division of purchasing. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see §§ 67-9204 and 67-9205.

History.

I.C., § 67-5717, as added by 1975, ch. 254, § 2, p. 686; am. 1978, ch. 347, § 1, p. 902; am. 1994, ch. 176, § 2, p. 402; am. 1996, ch. 198, § 2, p. 616; am. 2000, ch. 316, § 2, p. 1064; am. 2001, ch. 36, § 2, p. 55; am. 2014, ch. 233, § 1, p. 592.

STATUTORY NOTES

Prior Laws.

Former § 67-5717, which comprised **I.C., § 67-5717**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5718. Requisitions for property — Notice — Form — Guarantee — Procedure for bidding. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see § 67-9208.

History.

I.C., § 67-5718, as added by 1975, ch. 254, § 2, p. 686; am. 1978, ch. 347, § 2, p. 902; am. 1986, ch. 264, § 1, p. 683; am. 1993, ch. 306, § 1, p. 1135; am. 1994, ch. 242, § 1, p. 760; am. 1996, ch. 198, § 3, p. 616; am. 2001, ch. 36, § 3, p. 55; am. 2001, ch. 183, § 35, p. 613; am. 2007, ch. 90, § 30, p. 246.

STATUTORY NOTES

Prior Laws.

Former § 67-5718, which comprised **I.C., § 67-5718**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5718A. Acquisition of property by contract — Award to more than one bidder — Standards for multiple awards — Approval by administrator. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see §§ 67-9210 and 67-9211.

History.

I.C., § 67-5718A, as added by 1996, ch. 114, § 1, p. 422; am. 2001, ch. 36, § 4, p. 55.

§ 67-5719. Statement of supplies on hand — Estimated requirements — Inspections and inventories. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see § 67-9201 et seq.

History.

I.C., § 67-5719, as added by 1975, ch. 254, § 2, p. 686.

STATUTORY NOTES

Prior Laws.

Former § 67-5719, which comprised **I.C., § 67-5719** as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

**§ 67-5720. Acquisition in open market — Emergency purchases.
[Repealed.]**

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see § 67-9201 et seq.

History.

I.C., § 67-5720, as added by 1975, ch. 254, § 2, p. 686; am. 1979, ch. 29, § 1, p. 45; am. 1986, ch. 264, § 2, p. 683; am. 1994, ch. 176, § 3, p. 402; am. 2001, ch. 36, § 5, p. 55.

STATUTORY NOTES

Prior Laws.

Former § 67-5720, which comprised **I.C., § 67-5720**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5721. Acquisition of nonowned property — Options to acquire — Determination of option costs. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 1, effective July 1, 2016. For present comparable provisions, see § 67-9222.

History.

I.C., § 67-5721, as added by 1975, ch. 254, § 2, p. 686.

STATUTORY NOTES

Prior Laws.

Former § 67-5721 which comprised S.L. 1974, ch. 34, § 2 was repealed by S.L. 1975, ch. 254, § 1.

Another former § 67-5721, which comprised S.L. 1967, ch. 332, § 1, p. 968, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5722. Declaration of surplus property. — In accordance with the internal management policies, guidelines or instructions of the board of examiners, the head of any agency may declare as surplus any item of personal property.

History.

I.C., § 67-5722, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 1, p. 374; am. 2000, ch. 5, § 1, p. 8; am. 2001, ch. 36, § 6, p. 55; am. 2016, ch. 289, § 17, p. 793.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Prior Laws.

Former § 67-5722, which comprised 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

Another former § 67-5722, which comprised S.L. 1967, ch. 332, § 2, p. 968, was repealed by S.L. 1974, ch. 34, § 1.

Amendments.

The 2016 amendment, by ch. 289, rewrote the section heading, which formerly read: “Sale, trade-in or exchange of state personal property”; and deleted the former first two paragraphs, which read: “Whenever any agency owns any property no longer economical to use, the administrator of the division of purchasing may dispose of such property by exchanging the same in part payment for new property, as provided for in this section. The administrator of the division of purchasing shall include in his request for bids a full description of the property to be exchanged as part payment and shall permit vendors to examine the same, and the contract shall be awarded on the basis of net cost to the state after allowance for the property to be exchanged in part payment. In addition, the administrator of the division of

purchasing may permit an exchange of property in part payment for new property acquisitions from contracts for the same or similar property.

“Exchange of property will be permitted only when it is determined by the administrator of the division of purchasing that all other methods of disposal of the property sought to be exchanged will yield a lesser monetary return to the state.”

Effective Dates.

Section 2 of S.L. 2000, ch. 5 provided that the act shall be in full force and effect on and after July 1, 2000.

§ 67-5723. Discounts — Negotiations for required rules, regulations and procedures. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9226.

History.

I.C., § 67-5723, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 2, p. 374.

STATUTORY NOTES

Prior Laws.

Former § 67-5723, which comprised 1974, ch. 332, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

Another former § 67-5723, which comprised S.L. 1967, ch. 332, § 3, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5724. Contracts with federal government or its agencies exempt from certain provisions. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9227.

History.

I.C., § 67-5724, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 3, p. 374.

STATUTORY NOTES

Prior Laws.

Former § 67-5724, which comprised **I.C., § 67-5724**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

Idaho Code § 67-5724A

§ 67-5724A. Acquisition of property — General services administration federal supply schedule contracts. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9228.

History.

I.C., § 67-5724A, as added by 1996, ch. 197, § 1, p. 616.

§ 67-5725. Preservation of records — Written contracts — Void contracts. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see §§ 67-9212 and 67-9215.

History.

I.C., § 67-5725, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 4, p. 374; am. 2006, ch. 62, § 1, p. 192; am. 2015, ch. 141, § 180, p. 379.

STATUTORY NOTES

Prior Laws.

Former § 67-5725, which comprised **I.C., § 67-5725**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5726. Prohibitions. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9230.

History.

I.C., § 67-5726, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 5, p. 374; am. 1994, ch. 110, § 1, p. 243; am. 2001, ch. 36, § 7, p. 55.

STATUTORY NOTES

Prior Laws.

Former § 67-5726, which comprised **I.C., § 67-5726**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

Idaho Code § 67-5727

§ 67-5727. Maintenance of stocks — Requisitions from stocks — Payment. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9201 et seq.

History.

I.C., § 67-5727, as added by 1975, ch. 254, § 2, p. 686; am. 1976, ch. 51, § 17, p. 152.

STATUTORY NOTES

Prior Laws.

Former § 67-5727, which comprised **I.C., § 67-5727**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5727A. Participation in group discount purchasing. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9224.

History.

I.C. 67-5727A, as added by 1987, ch. 325, § 1, p. 681; am. 2001, ch. 36, § 8, p. 55.

§ 67-5728. Procuring and purchasing by state institution of higher education. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9225.

History.

I.C., § 67-5728, as added by 2010, ch. 286, § 2, p. 766.

STATUTORY NOTES

Prior Laws.

Former § 67-5728, which comprised **I.C., § 67-5728**, as added by 1975, ch. 254, § 2, p. 686; am. 1976, ch. 51, § 18, p. 152, was repealed by S.L. 2000, ch. 3, § 1, effective July 1, 2000.

§ 67-5729. Application of administrative procedure act. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9229.

History.

I.C., § 67-5729, as added by 1975, ch. 254, § 2, p. 686; am. 1978, ch. 347, § 3, p. 902; am. 1994, ch. 176, § 4, p. 402; am. 2001, ch. 36, § 9, p. 55.

STATUTORY NOTES

Prior Laws.

Former § 67-5729, which comprised **I.C., § 67-5729**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5730. Qualification of vendors — disqualification of vendors — Notice — Appeals. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9201 et seq.

History.

I.C., § 67-5730, as added by 1975, ch. 254, § 2, p. 686; am. 1986, ch. 264, § 3, p. 683; am. 1988, ch. 13, § 1, p. 15; am. 1994, ch. 176, § 5, p. 402; am. 2001, ch. 36, § 10, p. 55.

STATUTORY NOTES

Prior Laws.

Former § 67-5730, which comprised **I.C., § 67-5730**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5731. Procedure for challenging specifications — Hearings on influencing contracts — Final determinations. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1967, ch. 333, § 1, p. 969, was repealed by S.L. 1974, ch. 34, § 1; section 2 of the latter act created a new § 67-5731 which was subsequently repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975. Section 2 of the 1975 act created a new § 67-5731 which was repealed by S.L. 1978, ch. 347, § 4.

§ 67-5732. Rules. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 2, effective July 1, 2016. For present comparable provisions, see § 67-9201 et seq.

History.

I.C., § 67-5732, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 6, p. 374; am. 1994, ch. 176, § 6, p. 402; am. 2001, ch. 36, § 11, p. 55.

STATUTORY NOTES

Prior Laws.

Former § 67-5732 which comprised S.L. 1974, ch. 34, § 2 was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

Another former § 67-5732, which comprised 1967, ch. 333, § 2, p. 969; am. 1970, ch. 43, § 2, p. 90, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5732a. Control over capitol building and grounds. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised R.S., § 173; am. 1888-1889, p. 14, § 1; compiled and reen. R.C., § 87; reen. C.L., § 87; C.S., § 347; am. 1921, ch. 126, § 2, p. 310; I.C.A., § 65-3103; am. 1953, ch. 79, § 1, p. 102; am. 1967, ch. 129, § 2, p. 298; am. 1968 (2nd E.S.), ch. 19, § 1, p. 37; am. 1970, ch. 43, § 1, p. 90, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5732b. Status of transferred employees unaffected. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1967, ch. 129, § 2, p. 298, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5732A. Disposal of surplus personal property authorized. — Whenever the head of any commission, board, council, task force, committee or department of state government, or any institution of the state, or any elected state official, has under their jurisdiction or control, any personal property belonging to the state which, in their judgment, is of no further use to the state or to such commission, board, council, task force, committee, department, institution or state office, they may sell, transfer, recycle or discard such personal property in the name of the state and in accordance with the internal management policies and procedures of the board of examiners. The board of examiners shall adopt internal management policies and procedures for the disposal of state surplus personal property to efficiently dispose of surplus personal property, to allow conveyance of surplus personal property to other state, federal and local agencies, to offer state surplus personal property for sale to the public at large and to provide for maximum value received by the state of Idaho with attendant benefits to its citizens. Provided that when sales will be offered to the public and sold to the highest responsible bidder, notice of such sale shall be published in at least a newspaper of general circulation in accordance with section 60-106, Idaho Code, for at least two (2) weeks prior to such offering.

History.

I.C., § 67-5732A, as added by 1991, ch. 158, § 7, p. 374; am. 2003, ch. 31, § 3, p. 114; am. 2011, ch. 59, § 1, p. 123.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Amendments.

The 2011 amendment, by ch. 59, inserted “federal” preceding “and local agencies” near the middle of the second sentence.

§ 67-5732B. Governor's housing committee personal property exempt from act. — Section 67-5732A, Idaho Code, shall not apply to personal property if acquired by or on behalf of the governor's housing committee pursuant to section 67-455 or 67-455A, Idaho Code, as the same now exists or may from time to time be amended. This section shall apply to all personal property acquired pursuant to section 67-455 or 67-455A, Idaho Code, before or after the effective date of this section.

History.

I.C., § 67-5732B, as added by 1999, ch. 336, § 4, p. 912.

STATUTORY NOTES

Compiler's Notes.

The phrase "the effective date of this section" refers to the effective date of S.L. 1999, ch. 336, § 4, which was effective March 24, 1999.

Effective Dates.

Section 5 of S.L. 1999, ch. 336 declared an emergency. Approved March 24, 1999.

§ 67-5733. Division of purchasing — Appeals. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 3, effective July 1, 2016. For present comparable provisions, see § 67-9232.

History.

I.C., § 67-5733, as added by 1978, ch. 347, § 5, p. 902; am. 1986, ch. 264, § 4, p. 683; am. 1988, ch. 154, § 1, p. 275; am. 1994, ch. 176, § 7, p. 402; am. 2001, ch. 36, § 12, p. 55.

STATUTORY NOTES

Prior Laws.

Former § 67-5733 which comprised S.L. 1975, ch. 254, § 2, was repealed by S.L. 1978, ch. 347, § 4.

A second former § 67-5733 which comprised S.L. 1974, § 2 was repealed by S.L. 1975, ch. 254, § 1.

A third former § 67-5733, which comprised S.L. 1967, ch. 340, § 1, p. 981; am. 1968 (2nd E.S.), ch. 19, § 2, p. 37 was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5734. Penalties. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 3, effective July 1, 2016. For present comparable provisions, see § 67-9231.

History.

I.C., § 67-5734, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 8, p. 374.

STATUTORY NOTES

Prior Laws.

Former § 67-5734 which comprised S.L. 1974, ch. 34, § 1, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

Another former § 67-5734, which comprised **I.C., § 67-5734**, as added by 1968 (2nd E.S.), ch. 19, § 3, p. 37, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5735. Processing — Reimbursement of contractor. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 3, effective July 1, 2016. For present comparable provisions, see § 67-9218.

History.

I.C., § 67-5735, as added by 1975, ch. 254, § 2, p. 686; am. 1991, ch. 158, § 9, p. 374; am. 1994, ch. 180, § 222, p. 420.

STATUTORY NOTES

Prior Laws.

Former § 67-5735, which comprised **I.C., § 67-5735**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5736. Acceptance. [Repealed.]

Repealed by S.L. 2016, ch. 289, § 3, effective July 1, 2016. For present comparable provisions, see § 67-9214.

History.

I.C., § 67-5736, as added by 1975, ch. 254, § 2, p. 686.

STATUTORY NOTES

Prior Laws.

Former § 67-5736, which comprised **I.C., § 67-5736**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

§ 67-5737. Severability. — Insofar as a provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 67-5737, as added by 1975, ch. 254, § 2, p. 686; am. 2016, ch. 289, § 18, p. 793.

STATUTORY NOTES

Prior Laws.

Former § 67-5737, which comprised **I.C., § 67-5737**, as added by S.L. 1974, ch. 34, § 2, was repealed by S.L. 1975, ch. 254, § 1, effective July 1, 1975.

Amendments.

The 2016 amendment, by ch. 289, deleted “Provisions of this chapter controlling” at the beginning of the section heading; substituted “Insofar as a provision” for “Except as provided in **section 67-5718, Idaho Code**, insofar as the provisions” at the beginning of the section.

Effective Dates.

Section 4 of S.L. 1975, ch. 254 provided that the act should take effect on and after July 1, 1975.

§ 67-5738, 67-5739. State car pool system — Transfers — Procedures — Claims not to be approved. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections, which comprised **I.C., § 67-5737**, as added by 1975, ch. 254, § 2, p. 686; **I.C., § 67-5738**, as added by 1974, ch. 34, § 2, p. 988, were repealed by S.L. 1991, ch. 158, § 10.

§ 67-5740. Additional authority and duties of the administrator of the division of purchasing. — (a) The administrator of the division of purchasing is authorized and empowered (1) to acquire from the United States of America under and in conformance with the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the “Act,” such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes of education, public health or civil defense, including research for any such purpose, and for such other purposes as may now or hereafter be authorized by federal law; (2) to warehouse such property; and (3) to distribute such property within the state to tax-supported medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, and universities within the state, to other nonprofit medical institutions, hospitals, clinics, health centers, schools, colleges and universities which have been held exempt from taxation under section 501(c)(3) of the United States Internal Revenue Code of 1954, to civil defense organizations of the state, or political subdivisions and instrumentalities thereof, which are established pursuant to state law, and to such other types of institutions or activities as may now be or hereafter become eligible under federal law to acquire such property.

(b) The administrator is hereby authorized to receive applications from eligible institutions for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate health or educational authorities of the state, make recommendations regarding the need of such applicant for the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act.

(c) For the purpose of executing its authority under this chapter, the administrator is authorized and empowered to adopt, amend, or rescind such rules and prescribe such requirements as may be deemed necessary and take such other action as is deemed necessary and suitable, in the

administration of this chapter, to assure maximum utilization by and benefit to health, educational and civil defense and other eligible institutions and organizations within the state from property distributed under this chapter.

(d) The administrator, subject to approval of the director of administration, is authorized and empowered to appoint advisory boards or committees, who shall be compensated as provided by [section 59-509\(b\), Idaho Code](#), and to employ such personnel and to fix their compensation and prescribe their duties, as are deemed necessary and suitable for the administration of this chapter. Expenditures incurred hereunder shall be paid as are other claims against the state.

(e) The administrator is authorized and empowered to make such certifications, take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the state (including cooperative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel and services of each by the other), require such reports and make such investigations as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by him from the United States of America; provided, that all expenditures, contracts, agreements and undertakings for and in the name of the state shall have the approval of the state board of examiners.

(f) The administrator is authorized and empowered to act as a clearing house of information for the public and private nonprofit institutions, organizations and agencies referred to in subparagraph [subsection] (a), and other institutions eligible to acquire federal surplus real property, to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above mentioned institutions, organizations and agencies and to transmit to them all available information in reference to such property, and to aid and assist such institutions, organizations and agencies in every way possible in the consummation of acquisitions or transactions hereunder.

(g) The administrator, in the administration of this chapter, shall cooperate to the fullest extent consistent with the provisions of the act, with

the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standard prescribed in accordance with the act, and make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for, property donable or donated to the state.

(h) The administrator, with approval of the board of examiners, is authorized to contract with agencies of other states responsible for the handling of surplus property for:

(1) The acquisition, warehousing, and distribution of surplus property on behalf of the state of Idaho and the delivery of surplus property within the state of Idaho; and

(2) The acquisition, warehousing, and distribution of surplus property on behalf of other states and the delivery of surplus property in other states; provided, that any contract negotiated under the authority of this subparagraph (2) shall obligate the other states to pay the cost of the surplus property and the administrative costs incurred in the acquisition, warehousing, and distribution of the surplus property; and

(3) The furnishing of any services to the state of Idaho concerning the acquisition, warehousing, and distribution of surplus property, and the sorting, dividing into lots, crating, preparing for shipment, and any other handling of surplus property for the state of Idaho.

History.

I.C., § 67-5740, as added by 1974, ch. 34, § 2, p. 988; am. 1980, ch. 247, § 90, p. 582; am. 1994, ch. 176, § 8, p. 402.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Federal References.

Section 203(j) of the Federal Property and Administrative Services Act of 1949, referred to in subsection (a), was codified as [40 U.S.C.S. § 484\(j\)](#), but was subsequently omitted from the United States Code. See [40 U.S.C.S. § 549](#) for present comparable provisions.

[Section 501\(c\)\(3\) of the United States Internal Revenue Code of 1954](#), referred to near the end of subsection (a), is codified as [26 U.S.C.S. § 501\(c\)\(3\)](#).

Section 203(k) of the Federal Property and Administrative Services Act of 1949, referred to in subsection (b), was codified as [40 U.S.C.S. § 484\(k\)](#), but was subsequently omitted from the United States Code. See [40 U.S.C.S. § 550](#) for present comparable provisions.

Compiler's Notes.

The bracketed insertion near the beginning of subsection (f) was added by the compiler to correct the internal reference.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-5741. Delegation of duties — Bonding of agency personnel. —

The director of the department of administration may delegate to any employees of the division of purchasing such authority as he deems reasonable and proper for the effective administration of this act. The director may utilize the services of officers and employees of any of the state departments and any other governmental agencies of the state receiving surplus property under the provisions of this act, and all such departments and agencies are hereby authorized to assist and cooperate with the director in the administration of this act. Any person in the employ of the division of purchasing agency may in the discretion of the governor be required to execute and deliver to the governor a bond payable to the state in such amount as may be fixed by the governor, conditioned upon the proper care, disbursement, and accounting of all funds and the proper care, distribution, and accounting of all property received from the United States under the authority of this act; provided, however, the governor may accept an adequate indemnity bond covering all or part of the persons so accountable and responsible.

History.

I.C., § 67-5741, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Prior Laws.

Former § 67-5741, which comprised S.L. 1967, ch. 334, § 1, p. 970, was repealed by S.L. 1974, ch. 34, § 1.

Compiler's Notes.

The term “this act” throughout this section refers to S.L. 1974, Chapter 34, which is compiled as §§ 6-919 to 6-921, 41-3502, 41-3503, 59-802 to 59-804, 67-5301, 67-5701 to 67-5706, 67-5708 to 67-5712, 67-5740 to 67-5744, 67-5746, 67-5748 to 67-5750.

§ 67-5742. Delegation of authority to acquire surplus property. — Any provision of law to the contrary notwithstanding, the governing board, or in case there be none, the executive head, of any state department, instrumentality, or agency or of any county, city, school district or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property under this act and to obligate the state or political subdivision to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation shall have been received by the administrator of the division of purchasing.

History.

I.C., § 67-5742, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Prior Laws.

Former § 67-5742, which comprised S.L. 1967, ch. 334, § 2, p. 970, was repealed by S.L. 1974, ch. 34, § 1.

Compiler's Notes.

The term “this act” near the end of the first sentence refers to S.L. 1974, Chapter 34, which is compiled as §§ 6-919 to 6-921, 41-3502, 41-3503, 59-802 to 59-804, 67-5301, 67-5701 to 67-5706, 67-5708 to 67-5712, 67-5740 to 67-5744, 67-5746, 67-5748 to 67-5750.

§ 67-5743. Transfer charges. — The administrator of the division of purchasing is hereby authorized to make charges and to assess fees from the recipient of any surplus property acquired and distributed under this act. Any charges made or fees assessed by the administrator for the acquisition, warehousing, distribution, or transfer of any property of the United States of America for educational, public health or civil defense purposes, including research, shall be limited to those reasonably related to the costs of care and handling in respect to its acquisition, receipt, warehousing, distribution or transfer by the surplus property agency and, in the case of real property, such charges and fees shall be limited to the reasonable administrative costs of the division incurred in effecting transfer.

History.

I.C., § 67-5743, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Cross References.

Division of purchasing, § 67-9204.

Prior Laws.

Former § 67-5743, which comprised S.L. 1967, ch. 334, § 3, p. 970, was repealed by S.L. 1974, ch. 34, § 1.

Compiler's Notes.

The term “this act” at the end of the first sentence refers to S.L. 1974, Chapter 34, which is compiled as §§ 6-919 to 6-921, 41-3502, 41-3503, 59-802 to 59-804, 67-5301, 67-5701 to 67-5706, 67-5708 to 67-5712, 67-5740 to 67-5744, 67-5746, 67-5748 to 67-5750.

§ 67-5744. Surplus property fund maintained — Charges and fees, deposition. — The surplus property revolving fund, as created by chapter 161, laws of 1957, is hereby maintained and continued to carry out the provisions of sections 67-5740 — 67-5744, Idaho Code. The charges or fees received by the division of purchasing for acquisition, warehousing, distribution or transfer of surplus property shall be deposited and credited to the said surplus property revolving fund, which fund shall be available for expenditure in administering the provisions of sections 67-5740 — 67-5744, Idaho Code, including payment of the actual expenses of current operations and the purchase of necessary equipment, and the acquisition and maintenance of a working capital reserve within the surplus property revolving fund. Any prior appropriation made to the revolving fund is hereby declared to be exempt from the provisions of the Standard Appropriations Act of 1945.

The amount of the working capital reserve in any fiscal year shall be determined by the director of the department of administration and shall not exceed an amount equivalent to the estimated cost of operation of the surplus property function of the division for the next succeeding fiscal year; provided, however, that accounts receivable which are uncollectible and all liabilities incurred in the performance of sections 67-5740 — 67-5744, Idaho Code, including the unrepaid balance of the amount heretofore appropriated to the surplus property revolving fund from the general fund of the state of Idaho, shall be deducted from current assets in determining, as of the end of any fiscal year, the amount of working capital reserve for the next succeeding fiscal year.

In any fiscal year the director of administration may transfer from the surplus property revolving fund to the general fund of the state of Idaho any sum not exceeding the unrepaid balance of the amount heretofore appropriated to the surplus property revolving fund. Upon termination or repeal of [sections 67-5740 — 67-5744, Idaho Code](#), any balance remaining in said revolving fund not exceeding the unrepaid balance of the amount heretofore appropriated to the surplus property revolving fund is hereby transferred to and made a part of the general fund of the state, and any balance remaining in the said revolving fund in excess of the said unrepaid

balance shall be disposed for the benefit of qualified public health, educational, civil defense, and other organizations or institutions within the state of Idaho in accordance with the requirements of federal law.

History.

I.C., § 67-5744, as added by 1974, ch. 34, § 2, p. 988; am. 1994, ch. 176, § 9, p. 402.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Standard Appropriation Act of 1945, § 67-3601 et seq.

Prior Laws.

Former § 67-5744, which comprised S.L. 1967, ch. 334, § 4, p. 970, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5745. Declaration of purpose. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 13, effective July 1, 2018. For present comparable provisions, see § 67-830.

History.

I.C., § 67-5745, as added by 1996, ch. 115, § 2, p. 424; am. 2013, ch. 173, § 1, p. 400.

STATUTORY NOTES

Prior Laws.

Former § 67-5745, which comprised **I.C., § 67-5745**, as added by 1974, ch. 34, § 2, p. 988; am 1993, ch. 221, § 4, p. 747, was repealed by S.L. 1996, ch. 115, § 1, effective March 6, 1996.

Idaho Code § 67-5745A

§ 67-5745A. Definitions. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 14, effective July 1, 2018. For present comparable provisions, see § 67-831.

History.

I.C., § 67-5745A, as added by 1996, ch. 115, § 2, p. 424.

Idaho Code § 67-5745B

§ 67-5745B. Idaho technology authority — Composition — Appointment and term of office — Reimbursement — Contracting for necessary services. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 15, effective July 1, 2018. For present comparable provisions, see § 67-832.

History.

I.C., § 67-5745B, as added by 1996, ch. 115, § 2, p. 424; am. 2013, ch. 173, § 2, p. 400.

§ 67-5745C. General powers and duties of the authority. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 16, effective July 1, 2018. For present comparable provisions, see § 67-833.

History.

I.C., § 67-5745C, as added by 1996, ch. 115, § 2, p. 424; am. 1998, ch. 174, § 1, p. 614; am. 2002, ch. 310, § 1, p. 883; am. 2013, ch. 173, § 3, p. 400.

§ 67-5745D. Idaho education network. [Repealed.]

Repealed by S.L. 2016, ch. 182, § 1, effective July 1, 2016. For present comparable provisions, see § 33-5601 et seq.

History.

I.C., § 67-5745D, as added by 2008, ch. 260, § 3, p. 754; am. 2009, ch. 131, § 2, p. 410; am. 2010, ch. 357, § 2, p. 935.

Idaho Code § 67-5745E

§ 67-5745E. Idaho education network program and resource advisory council (IPRAC). [Repealed.]

Repealed by S.L. 2016, ch. 182, § 2, effective July 1, 2016. For present comparable provisions, see § 33-5601 et seq.

History.

I.C., § 67-5745E, as added by 2010, ch. 357, § 3, p. 935.

§ 67-5746. Inventory of chattels — Contents — Duties of officers and employees — Recording — Annual revision — Open to inspection. —

All agency directors shall develop and maintain an inventory system, meeting minimum requirements as set forth by the department of administration, for all personal property which the agency owns or is responsible for whether under terms of any contract, grant, or otherwise.

To maintain uniformity among the various agency property inventory systems, the department of administration shall develop and distribute to each agency minimum requirements for each inventory system. Each agency shall feel free to add additional functions beyond those minimums to meet their requirements. The inventory shall be recorded in a permanent record to be kept for that purpose, showing as a minimum a description of the property, where located, acquisition cost or estimated fair market value, and date of acquisition, its estimated current replacement cost, and the account or unit within the responsible agency. Each agency may add additional functions beyond these minimums to meet their agency requirements.

Each state agency director shall be accountable for the maintenance, security, and efficient economic use, as well as the verification of physical location and condition of all personal property belonging to that agency.

The agency director shall be responsible for conducting an annual inventory of all personal property by no later than the first day of March of each fiscal year. Further, each agency director shall make a written report to the director of the department of administration that the inventory has been completed by the end of the first week of March of each year on a form developed by and under such guidelines as are issued by the department of administration.

The department of administration shall provide all agencies with an inflation factor for property in early January of each year to assist agency directors in discharging the responsibility set forth herein.

Each agency director may appoint a property control officer who shall be responsible for conducting the annual inventory of agency property. The

property control officer shall also be responsible for ensuring the prompt recording of newly acquired property and the economical disposition of surplus property in a timely manner. The property control officer shall periodically review the values of property for reasonableness.

The agency director shall have the authority to dispose of surplus property in accordance with the provisions of [section 67-5732A, Idaho Code](#).

History.

[I.C., § 67-5746](#), as added by 1974, ch. 34, § 2, p. 988; am. 1976, ch. 27, § 1, p. 62; am. 1979, ch. 23, § 1, p. 33; am. 1983, ch. 28, § 1, p. 78; am. 1991, ch. 158, § 11, p. 374.

§ 67-5747. Powers and duties. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 17, effective July 1, 2018. For present comparable provisions, see § 67-833.

History.

I.C., § 67-5747, as added by 1974, ch. 34, § 2, p. 988; am. 1981, ch. 77, § 1, p. 109; am. 1983, ch. 181, § 3, p. 491; am. 1993, ch. 221, § 5, p. 747; am. 1994, ch. 176, § 10, p. 402; am. 2007, ch. 292, § 4, p. 828.

§ 67-5748. Transfer of funds, equipment, facilities, and employees. — In order to provide for the orderly implementation of this chapter and to provide an economical, efficient, and effective system of information technology and telecommunications for the state, the board of examiners may order such transfer of appropriated funds, custody and control of equipment and facilities, and employees to the department of administration as may be necessary to carry out the purposes of this act.

History.

I.C., § 67-5748, as added by 1974, ch. 34, § 2, p. 988; am. 1993, ch. 221, § 6, p. 747; am. 1996, ch. 115, § 3, p. 424.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Compiler's Notes.

The term “this act” at the end of the section refers to S.L. 1974, Chapter 34, which is compiled as §§ 6-919 to 6-921, 41-3502, 41-3503, 59-802 to 59-804, 67-5301, 67-5701 to 67-5706, 67-5708 to 67-5712, 67-5740 to 67-5744, 67-5746, 67-5748 to 67-5750.

Effective Dates.

Section 4 of S.L. 1996, ch. 115 declared an emergency. Approved March 6, 1996.

§ 67-5749. Central postal system. — There is hereby created the central postal system under the direction of the department of administration. The central postal system shall be under the supervision of a central postal system head [chief] who shall cause to be distributed all incoming mail and process all outgoing mail for all departments, agencies, institutions and offices of the state of Idaho which are housed and located within the capitol mall.

The department of administration is authorized to add such personnel and to acquire such postal equipment as may be necessary to efficiently operate the central postal system.

History.

I.C., § 67-5749, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the first paragraph was added by the compiler to reflect the 1980 amendment of § 67-5750.

§ 67-5750. Postage appropriations — Records of departmental mail kept through central postal system — Exception. — The central postal system chief, under the direction of the department of administration, shall cause to be metered all such outgoing mail and shall be responsible for the keeping of records and costs thereof, and shall be able to at least monthly certify to the state controller the amount expended on behalf of each department, agency or institution directly utilizing the central postal system, which amount shall be charged against the funds of such department, agency or institution and continually appropriated to the account of the department of administration for the operation of the central postal system. Those agencies which expend funds for stamps and metered postage directly shall make expenditure reports available to the department of administration at least semiannually. The department of administration shall annually submit in the department budget request an accounting of the total cost of postage to the state, as well as the calculated savings and the methods through which such savings were derived. The central postal system chief is hereby directed to evaluate materials to be mailed and shall cause mail to be properly prepared utilizing the lowest practical and most feasible rate of postage. Provided, however, that each member of the legislature of the state of Idaho shall be issued United States postage for each session attended, in an amount determined by each session of the legislature to be charged to the legislative expense appropriation.

History.

I.C., § 67-5750, as added by 1974, ch. 34, § 2, p. 988; am. 1974, ch. 192, § 1, p. 1500; am. 1980, ch. 45, § 1, p. 75; am. 1981, ch. 77, § 2, p. 109; am. 1994, ch. 180, § 223, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-2001 et seq.

Effective Dates.

Section 2 of S.L. 1974, ch. 192 provided that the act would be in full force and effect on and after July 1, 1974.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 223 was effective January 2, 1995.

§ 67-5751. Records management. [Repealed.]

Repealed by S.L. 2012, ch. 216, § 4, effective July 1, 2012. For present comparable provisions, see §§ 67-4126, 67-4129C, and 67-4131.

History.

I.C., § 67-5751, as added by 1974, ch. 34, § 2, p. 988; am. 1994, ch. 176, § 11, p. 402.

STATUTORY NOTES

Prior Laws.

Former § 67-5751, which comprised S.L. 1967, ch. 337, § 1, p. 973, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5751A. Historical records. [Repealed.]

Repealed by S.L. 2012, ch. 216, § 5, effective July 1, 2012. For present comparable provisions, see §§ 67-4126, 67-4129C, and 67-4131.

History.

I.C., § 67-5751A, as added by 1975, ch. 177, § 2, p. 482.

§ 67-5752. Records management manual. [Repealed.]

Repealed by S.L. 2012, ch. 216, § 6, effective July 1, 2012. For present comparable provisions, see §§ 67-4126, 67-4129C, and 67-4131.

History.

I.C., § 67-5752, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Prior Laws.

Former § 67-5752, which comprised S.L. 1967, ch. 337, § 2, p. 973, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5752A. Additional powers, duties, functions and responsibilities of bureau of budget. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-5752A, as added by 1971, ch. 282, § 1, p. 1096; am. 1972, ch. 403, § 1, p. 1186, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5753. Microfilming services. [Repealed.]

Repealed by S.L. 2012, ch. 216, § 7, effective July 1, 2012. For present comparable provisions, see §§ 67-4126, 67-4129C, and 67-4131.

History.

I.C., § 67-5753, as added by 1974, ch. 34, § 2, p. 988.

STATUTORY NOTES

Prior Laws.

Former § 67-5753, which comprised S.L. 1967, ch. 337, § 3, p. 973, was repealed by S.L. 1974, ch. 34, § 1.

§ 67-5754. [Amended and Redesignated.]

STATUTORY NOTES

Prior Laws.

A former § 67-5754, which comprised I.C., § 67-5754, as added by 1969, ch. 216, § 1, p. 709 was repealed by S.L. 1974, ch. 34, § 1.

Compiler's Notes.

This section, which comprised I.C., § 67-5753, as added by 1974, ch. 252, § 2, p. 1647; I.C., § 67-5754, as corrected by 1975, ch. 195, § 1, p. 540, was amended and redesignated as § 67-5774 by S.L. 1980, ch. 106, § 23.

§ 67-5755. [Amended and Redesignated.]

STATUTORY NOTES

Prior Laws.

A former § 67-5755, which comprised I.C., § 67-5755, as added by 1969, ch. 216, § 2, p. 709, was repealed by S.L. 1974, ch. 34, § 1.

Compiler's Notes.

This section, which comprised I.C., § 67-5754, as added by 1974, ch. 252, § 3, p. 1647; I.C., § 67-5755, as corrected by 1975, ch. 195, § 2, p. 540, was amended and redesignated as § 67-5773 by S.L. 1980, ch. 106, § 22.

§ 67-5756. [Amended and Redesignated.]

STATUTORY NOTES

Prior Laws.

A former § 67-5767, which comprised S.L. 1969, ch. 216, § 3, p. 709, was repealed by S.L. 1974, ch. 34, § 1.

Compiler's Notes.

This section, which comprised I.C., § 67-5755, as added by 1974, ch. 252, § 4, p. 1647; I.C., § 67-5756, as corrected by 1975, ch. 195, § 3, p. 540, was amended and redesignated as § 67-5775 by S.L. 1980, ch. 106, § 24.

§ 67-5757. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-5756, as added by 1974, ch. 252, § 5, p. 1647; I.C., § 67-5757, as corrected by 1975, ch. 195, § 4, p. 540, was amended and redesignated as § 67-5776 by S.L. 1980, ch. 106, § 25.

§ 67-5758. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-5757, as added by 1974, ch. 252, § 6, p. 1647; I.C., § 67-5758, as corrected by 1975, ch. 195, § 5, p. 540, was amended and redesignated as § 67-5777 by S.L. 1980, ch. 106, § 26.

§ 67-5759. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-5759, as added by 1975, ch. 195, § 6, p. 540, was amended and redesignated as § 67-5778 by S.L. 1980, ch. 106, § 27.

§ 67-5760. Insurance management. — The director of the department of administration shall be responsible for life, medical, disability, property, casualty, and other insurance as may be determined to be in the best interest of the state of Idaho by the department of administration. The director may employ additional personnel as may be necessary and may contract for professional or technical services or assistance when necessary and desirable.

History.

I.C., § 67-5760, as added by 1980, ch. 106, § 9, p. 231; am. 1993, ch. 221, § 7, p. 747.

§ 67-5761. Powers and duties — Group insurance. — (1) The director of the department of administration shall:

(a) Establish an advisory committee to be comprised of program participants from the executive, legislative and judicial branches of state government. The advisory committee shall include one (1) active and one (1) retired employee representative. The director shall consult with the advisory committee in the performance of those duties as enumerated in subsection (2) of this section.

(b) Promulgate rules for determining eligibility of active personnel, retired personnel and dependents of such active and retired personnel for participation in any group plans.

(c) Determine the nature and extent of needs for group life insurance, group annuities, group disability insurance, and group health care service coverages with respect to personnel, including elected or appointed officers and employees, of all offices, departments, divisions, boards, commissions, institutions, agencies and operations of the government of the state of Idaho and retired personnel, the premiums or prepayments for which are payable in whole or in part from funds of the state. “Disability” insurance includes all personal accident, health, hospital, surgical, and medical coverages, and “health care service” includes all services rendered for maintenance of good health and diagnosis, relief, or treatment of any injury, ailment, or bodily condition.

(d) Determine the types, terms, conditions, and amounts of group insurance, group annuities, or group coverage by health care service organizations, as the case may be, required by such needs.

(e) Negotiate and contract for, and have placed or continued in effect all such insurance and coverages as may reasonably be obtainable from insurers and health care service organizations, as the case may be, duly authorized to transact such business in this state. The director may negotiate deductibles to any group plan or coverage. Alternatively, the director may self-insure any insurance or coverage and may contract with

any insurance company or third party administrator duly authorized to transact business in this state or administer such plan.

(f) Prepare or otherwise obtain and make available to all personnel affected thereby, printed information concerning all such group plans currently in effect, together with the rules governing eligibility, payment of premium or prepayment where applicable, claims procedures, and other matters designed to facilitate utilization and administration of such plans.

(g) Administer all such group plans on behalf of the insured, including but not limited to:

(i) Enrollment and reporting to the insurer or health care service organization of individuals eligible for coverage and covered under particular policies or contracts, and termination of such enrollment upon termination of eligibility;

(ii) Collection or payment of premiums or prepayments for such coverage, policies and contracts and accounting for the same;

(iii) Establishment of reasonable procedures for handling claims arising under such coverage, policies and contracts, and rendering assistance to claimants, as may be required in the presentation and consideration of claims;

(iv) Effectuation of changes in such coverage, policies and contracts and renewal or termination thereof;

(v) Making and settlement of claims.

(2) The director shall formulate and negotiate a plan or plans of health care service coverage which includes eligible active personnel and their dependents in consultation with the advisory committee.

(3) The director shall formulate and negotiate a plan or plans of health care service coverage which includes eligible retired personnel and dependents. Such plan or plans will be pooled for rating purposes with the plan or plans provided for in subsection (2) of this section.

(a) Beginning July 1, 2009, the state shall pay one hundred fifty-five dollars (\$155) per eligible retired personnel per month toward such health care service coverage, subject to the conditions of subsection (3)

(b) of this section. Retired personnel shall be responsible for paying the balance of the monthly premium for any plan of health care service coverage provided pursuant to this section.

(b) Beginning January 1, 2010, retired personnel health care service coverage shall not be available to any retired personnel or dependent who is or becomes eligible for medicare. Dependent spouses of such medicare eligible retired personnel who are not themselves medicare eligible may remain on health care service coverage until they become eligible for medicare.

(c) Any person who is eligible for health care service coverage as a retired person prior to June 30, 2009, remains eligible for coverage subject to the conditions of subsections (3)(a) and (b) of this section.

(d) No personnel, including elected or appointed officers and employees, of all offices, departments, divisions, boards, commissions, agencies and operations of the government of the state of Idaho, who begin service or employment after June 30, 2009, shall be provided or be eligible for any retired personnel health care service coverage, unless such personnel have credited state service of at least twenty thousand eight hundred (20,800) hours before June 30, 2009, and subsequent to reemployment, election or reappointment on or after July 1, 2009, accumulate an additional six thousand two hundred forty (6,240) continuous hours of credited state service, and who are otherwise eligible for coverage.

(e) Nothing in this subsection prohibits an active employee who retires from state service on or after July 1, 2009, from being eligible for health care service coverage provided that he or she is drawing a state retirement benefit and meets eligibility requirements of the health care service coverage.

(f) The Idaho department of administration shall assist medicare eligible retirees in transitioning to a medicare supplement plan in accordance with procedures established by the advisory committee.

(4) Nothing contained herein and no coverage, policy or contract which provides coverage or benefits for active personnel, dependents of personnel, or retired personnel shall create any vested right or benefit for any such individual in group insurance coverage.

History.

1974, ch. 253, § 2, p. 1656; am. and redesign. 1980, ch. 106, § 10, p. 231; am. 1983, ch. 148, § 1, p. 401; am. 1986, ch. 150, § 1, p. 434; am. 1988, ch. 292, § 1, p. 930; am. 1990, ch. 117, § 1, p. 263; am. 1993, ch. 221, § 8, p. 747; am. 1998, ch. 185, § 1, p. 678; am. 2009, ch. 164, § 2, p. 492.

STATUTORY NOTES**Amendments.**

The 2009 amendment, by ch. 164, rewrote the section, revising powers and duties of the director of the department of administration regarding group insurance and revising provisions relating to group insurance coverage for certain retirees.

Compiler's Notes.

This section was formerly compiled as § 59-1206.

Effective Dates.

Section 2 of S.L. 1983, ch. 148 declared an emergency. Approved April 6, 1983.

Section 2 of S.L. 1986, ch. 150 declared an emergency. Approved April 1, 1986.

Section 2 of S.L. 1988, ch. 292 provided that the act should take effect on and after July 1, 1989.

Section 3 of S.L. 2009, ch. 164 declared an emergency. Approved April 14, 2009.

RESEARCH REFERENCES

ALR. — Group insurance: construction, application, and effect of policy provision extending conversion privilege to employee after termination of employment. [32 A.L.R.4th 1037](#).

§ 67-5761A. Mental health parity in state group insurance. — (1) It is the policy of the state of Idaho that state employees and their spouses with serious mental illnesses and state employees whose children have been diagnosed with serious emotional disturbances must not be discriminated against in group health care service coverages. Such coverages must provide for the treatment of serious mental illnesses and serious emotional disturbances in a manner that is equitable and commensurate with that provided for other major physical illnesses.

(2) For the purposes of this section:

(a) “Serious mental illness” means any of the following psychiatric illnesses as defined by the American psychiatric association in the diagnostic and statistical manual of mental disorders (DSM-IV-TR):

- (i) Schizophrenia;
- (ii) Paranoia and other psychotic disorders;
- (iii) Bipolar disorders (mixed, manic and depressive);
- (iv) Major depressive disorders (single episode or recurrent);
- (v) Schizoaffective disorders (bipolar or depressive);
- (vi) Panic disorders; and
- (vii) Obsessive-compulsive disorders.

(b) “Serious emotional disturbance” means “serious emotional disturbance” as defined in [section 16-2403, Idaho Code](#).

(3) To be considered nondiscriminatory and equitable under this section, group health care service coverage shall provide benefits and cover services that are essential to the effective treatment of serious mental illnesses and serious emotional disturbances in a manner that:

- (a) Is not more restrictive or more generous than benefits and coverages provided for other major illnesses;
- (b) Provides clinical care, but does not require partial care, of serious mental illness or serious emotional disturbance; and

(c) Is consistent with effective and common methods of controlling health care costs for other major illnesses.

History.

I.C., § 67-5761A, as added by 2006, ch. 97, § 2, p. 272.

STATUTORY NOTES

Compiler's Notes.

For further information on the diagnostic and statistical manual of mental disorders, see <https://www.psychiatry.org/psychiatrists/practice/dsm>.

Section 1 of S.L. 2006, ch. 97 provided: “Findings of the Legislature. The Legislature of the State of Idaho finds that:

“(1) Unequal health insurance coverage contributes to the destructive and unfair stigmatization of persons with serious mental illnesses that are beyond the control of the individuals in the same manner as cancer, diabetes and other serious physical health problems;

“(2) Schizophrenia strikes nearly one percent (1%) of Idahoans over the course of their lifetimes and approximately thirty percent (30%) of all hospitalized psychiatric patients in the United States are diagnosed with this most disabling group of mental disorders;

“(3) Left untreated, serious mental illnesses are some of the most disabling and potentially destructive illnesses affecting Idahoans;

“(4) Studies have found that up to ninety percent (90%) of all persons who commit suicide had a treatable serious mental illness, such as schizophrenia, depression or manic depressive illness;

“(5) Seventy percent (70%) to eighty percent (80%) of those diagnosed with depression respond quickly to treatment and eighty percent (80%) of those with schizophrenia can be relieved of acute symptoms with proper medication;

“(6) Approximately ninety five percent (95%) of what is known about both normal and abnormal functions of the brain has been learned in the past ten (10) years, but millions of people with serious mental illness have yet to benefit from these research advances;

“(7) More than five percent (5%) of Idaho children are diagnosed with serious emotional disturbance;

“(8) The state of Idaho faces the rising human and financial costs of leaving mental illness untreated; and

“(9) The 2005 Interim Health Care Task Force’s Mental Health Subcommittee conducted extensive hearings on mental health and on insurance parity, and the subcommittee endorsed a pilot project to establish a mental health insurance program for state employees and their families to determine the cost of parity in mental health insurance.”

Section 3 of S.L. 2006, ch. 97 provided: “The Department of Administration shall submit a report to the Legislature and the Health Care Task Force thereof by January 31, 2010, indicating any additional costs incurred to provide the coverage required by [Section 67-5761A, Idaho Code](#), for the first three (3) year period of coverage.”

The abbreviation enclosed in parentheses so appeared in the law as enacted.

§ 67-5761B. State contribution to state employee health savings accounts. — (1) All state officers or employees may, for themselves and their eligible dependents, create and maintain a health savings account and choose a high deductible health plan in accordance with the provisions of this section.

(2) As used in this section:

(a) “Employer premium” means the costs to the state of Idaho for a policy of group insurance procured by the department of administration.

(b) “Health savings account” means an account at a financial institution that is designed to help individuals save for future health care expenses pursuant to [26 U.S.C. section 223](#).

(c) “High deductible health plan” means a health plan qualifying for use with a health savings account pursuant to [26 U.S.C. section 223](#), and offered by the department of administration to eligible state officers and employees.

(3) State officers or employees who choose a high deductible health plan for themselves and their eligible dependents shall qualify for the deposits provided for in subsection (4) of this section. Such officers or employees shall establish and create a health savings account and provide information concerning such account to their employer.

(4) For each pay period, the employer shall deposit the difference between the employer premium for a state of Idaho high deductible health plan and the employer premium of the lowest deductible group health plan offered by the department of administration in the health savings account established and created by an officer or employee enrolled in a state of Idaho high deductible health plan. Deposits made pursuant to this subsection shall not exceed the United States internal revenue service’s maximum allowable contribution to a health savings account.

(5) Nothing in this section shall prohibit state officers or employees with a health savings account from contributing to such account of their own accord.

(6) The department of administration may promulgate rules to implement the provisions of this section.

History.

I.C., § 67-5761B, as added by 2013, ch. 213, § 2, p. 502.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2013, ch. 213 provided: “Legislative Intent. It is the intent of the Legislature to encourage, facilitate and fund health savings accounts for employees of the State of Idaho who are enrolled in a high deductible health plan. By encouraging state employees to create a health savings account, they will be empowered to make sound, responsible decisions and better manage their own medical care.”

§ 67-5761C. Health reimbursement arrangements for state employees. — (1) The department of administration may offer a health reimbursement arrangement as an approved benefit for all state employees or officers whose employer chooses to offer such a benefit to its employees or officers. All state employees or officers shall, for themselves and their eligible dependents, participate in a health reimbursement arrangement if the employer of such employees and officers chooses to offer the health reimbursement arrangement.

(2) For purposes of this section: (a) “Health reimbursement arrangement” means an arrangement whereby employees may reimburse themselves for health care costs approved by the internal revenue service from a tax-exempt employee benefit trust known as a voluntary employees’ beneficiary association.

(b) “Voluntary employees’ beneficiary association” (VEBA) means a tax-exempt employee benefit trust governed under [section 501\(c\)\(9\) of the Internal Revenue Code](#). A VEBA trust is managed by trustees elected by the employee members of the trust.

(3) The department of administration may promulgate rules to implement the provisions of this section.

History.

[I.C., § 67-5761C](#), as added by 2014, ch. 94, § 1, p. 261.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

Federal References.

[Section 501\(c\)\(9\) of the Internal Revenue Code](#), referred to in paragraph (2)(b), is codified as [26 U.S.C.S. § 501\(c\)\(9\)](#).

Compiler’s Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

§ 67-5762. Objectives and considerations. — It shall be the director of the department of administration's objective to procure and maintain on behalf of officers and employees the most adequate group coverages reasonably obtainable for the money available for required premiums and prepayments. In the selection of insurers and health care service organizations to provide such coverages, the director shall give consideration to factors, other than lowest apparent premium or prepayment, such as risk retention, reserves, extent to which the insurer or organization will facilitate administration, and to its reputation and record for promptness and fairness in the treatment of claims, as well as to its financial dependability.

History.

1974, ch. 253, § 5, p. 1656; am. and redesign. 1980, ch. 106, § 11, p. 231; am. 1993, ch. 221, § 9, p. 747.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1209.

§ 67-5763. Governmental body authorized to make contracts for group insurance for officers and employees. — Any school district, municipality, county, or the state of Idaho, or other political subdivision of the state of Idaho, is hereby authorized to make contracts of group insurance and arrangements with prepayment plans, insuring and covering life, health, hospitalization, medical and surgical service and expense, accident insurance, contracts of annuities and pensions, or any one or more of such forms of insurance, annuities, pensions, or prepayment plans of coverage for the benefit of its elected or appointed officers and employees including life, hospitalization, medical and surgical expense insurance or prepayment plan coverage for dependents of such officers and employees.

History.

1959, ch. 216, § 1, p. 471; am. 1974, ch. 253, § 10, p. 1656; am. and redesign. 1980, ch. 106, § 12, p. 231.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1201.

Effective Dates.

Section 12 of S.L. 1974, ch. 253 provided that the act should take effect on and after July 1, 1974.

§ 67-5764. Part payment of premium cost by governmental body. — Notwithstanding any other provision of law, any governmental body, department, commission, board, school district, college, university, hospital, or other institution operated by the state of Idaho, municipality, county, or other political subdivision or the state of Idaho, and supported in whole or in part by public funds, is hereby authorized to pay part of the cost of any such plan of insurance, annuity, pension, and/or prepayment plan, and may deduct from the officer's or employee's pay, salary, or compensation such part of the premium or charge payable by the officer or employee.

History.

1959, ch. 216, § 2, p. 471; am. and redesign. 1980, ch. 106, § 13, p. 231.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1202.

§ 67-5765. Government retirement program or group insurance plans in existence unaffected. — The provisions of this act shall not affect the validity of any retirement program or contract of group insurance or arrangement for prepayment plan coverage previously entered into by any governmental body, or by any school, college, university, hospital or other institutions operated by any of the municipalities, counties, or other political subdivisions of the state and supported in whole or part by public funds.

History.

1959, ch. 216, § 3, p. 471; am. and redesign. 1980, ch. 106, § 14, p. 231.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1203.

The term “this act” refers to S.L. 1959, Chapter 216, which is compiled as §§ 67-5763 to 67-5766.

§ 67-5766. Authority conferred additional only. — The authority hereby given shall be in addition to and not in derogation of any power existing in any governmental body, or in any school district, college, hospital, university or other institution operated by any of the municipalities or other political subdivisions of the state and supported in whole or in part by public funds, or in any municipality, school district, or political subdivision of the state under the provisions of any statute or any charter now in effect.

History.

1959, ch. 216, § 4, p. 471; am. and redesign. 1980, ch. 106, § 15, p. 231.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1204.

Effective Dates.

Section 5 of S.L. 1959, ch. 216 declared an emergency. Approved March 17, 1959.

§ 67-5767. Director may provide service to school districts, public community colleges, public colleges, public universities or other political subdivisions. — (1) Under terms and procedures mutually agreed upon by contract, the director of the department of administration may render the same services with respect to personnel of any school district, public community college, public college, public university, or other political subdivision of the state of Idaho. The cost of any group insurance, group annuity or health care service coverage so provided and of administration thereof shall be borne by the school district, public community college, public college, public university, or other political subdivision.

(2) Other political subdivision for the purpose of this section means any organization composed of units of government of Idaho or organizations funded only by government or government employee contributions or organizations who discharge governmental responsibilities that would otherwise be performed by government.

History.

1974, ch. 253, § 3, p. 1656; am. 1978, ch. 161, § 1, p. 350; am. and redesign. 1980, ch. 106, § 16, p. 231; am. 1993, ch. 221, § 10, p. 747; am. 2009, ch. 148, § 1, p. 438.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 148, rewrote the section catchline, which formerly read: “Director may provide service to school districts and other political subdivisions”; in subsection (1), twice inserted “public community college, public college, public university” and the last occurrence of “other”; and, in subsection (2), substituted “Other political subdivision” for “Governmental entity” and deleted the last sentence, which read: “All government entities are deemed to be political subdivisions for the purpose of this act.”

Compiler’s Notes.

This section was formerly compiled as § 59-1207.

§ 67-5768. Nominal policyholder — No obligation to state. — (1) In policies and contracts procured by the director of the department of administration under this act and covering personnel of any state office, department, division, board, commission, institution, agency and operation, the director of the department of administration shall be designated as the nominal policyholder or contract holder.

(2) No policy or contract shall create, or be deemed to constitute, any financial obligation on the part of the state of Idaho beyond the obligation, to contribute for or upon current premiums or prepayments thereof.

(3) Except as hereinafter provided, information obtained from any employee, dependent or retiree insured under this act shall be subject to disclosure according to chapter 1, title 74, Idaho Code; provided however, that if the affected employee, dependent or retiree waives in writing the right to hold such information confidential, said information may be disclosed.

History.

1974, ch. 253, § 4, p. 1656; am. and redesign. 1980, ch. 106, § 17, p. 231; am. 1983, ch. 29, § 1, p. 79; am. 1990, ch. 213, § 97, p. 480; am. 1993, ch. 221, § 11, p. 747; am. 2015, ch. 141, § 181, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in subsection (3).

Compiler’s Notes.

This section was formerly compiled as § 59-1208.

The term “this act” in subsection (1) refers to S.L. 1974, Chapter 253, which is codified as §§ 67-5761 to 67-5763 and 67-5767 to 67-5770.

The term “this act” in subsection (3) refers to S.L. 1983, Chapter 29, which is codified as this section.

Effective Dates.

Section 111 of S.L. 1990, Chapter 213 as amended by § 16 of S.L. 1991, Chapter 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 67-5769. Inter-departmental transactions — Administrative contribution — Amounts — Limits — Refunds — Appropriation. —

(1) The director of the department of administration shall charge each office, department, division, board, commission, institution, agency and operation, personnel of which is currently covered under one or more group plans administered by the director, and receive payment in advance for its properly apportioned share of the cost thereof. To the amount otherwise so found due for payment of premiums and prepayments for coverages, the director shall add a separately stated administrative contribution of such percentage, rate, or proportionate amount as may reasonably be required to pay the costs of maintaining the office of group insurance, including personnel costs, operating expenditures, and expenditures for capital outlay items. The director shall allocate the apportioned share of the reasonable costs of administering this act to each participating state unit in the same proportion that the amount of employees of the unit, excluding temporary or part time, bears to the total number of employees, excluding temporary or part time, of all combined units covered by this act.

(2) As to a particular office, department, division, board, commission, institution, agency or operation, such charges and payments shall not exceed the sum of (a) appropriated funds currently available for the purpose, and (b) amounts currently deducted from the salaries and other compensation of covered personnel specifically for the insurance or coverage. On or before the first day of August of each year, the director shall furnish each department with an estimate of the cost of insurance or coverage for the upcoming fiscal year.

(3) Refunds on premiums or prepayments, profit sharing, experience savings and refunds and other contract returns received by the director on account of group policies and group contracts shall be retained by the director and used for application upon future premiums and prepayments as equitably apportioned by the director.

(4) Moneys received by the director under this section shall be deposited to the credit of the group insurance account in the agency asset fund, and are hereby continually appropriated for the uses for which charged and

received, or as stated in subsection (3) of this section. Pending such use, such surplus moneys shall be invested by the state treasurer in the same manner as provided for under [section 67-1210, Idaho Code](#), with respect to other idle moneys in the state treasury. All interest or other yield on such investments shall be credited to the respective group insurance account.

History.

1974, ch. 253, § 6, p. 1656; am. 1975, ch. 55, § 1, p. 117; am. and redesign. 1980, ch. 106, § 18, p. 231; am. 1993, ch. 221, § 12, p. 747.

STATUTORY NOTES

Cross References.

Group insurance account, § 67-5771.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

This section was formerly compiled as § 59-1210.

The term “this act” in subsection (1) refers to S.L. 1974, Chapter 253, which is codified as §§ 67-5761 to 67-5763 and 67-5767 to 67-5770.

For more on the office of group insurance, referred to in subsection (1), see <https://ogi.idaho.gov>.

§ 67-5770. Retirement system not affected. — Nothing in this act shall apply to or affect the public employee retirement system of Idaho as established under chapter 13, title 59, Idaho Code, the policemen's retirement fund as established under chapter 15, title 50, Idaho Code, the firemen's retirement fund as established under chapter 14, title 72, Idaho Code, the judges retirement fund as established under chapter 20, title 1, Idaho Code, or the retirement system of the department of employment as established under chapter 13, title 72, Idaho Code, as heretofore or hereafter amended or supplemented.

Provided, however, for the purpose of standardizing retirement benefits for all county employees, any county not participating in the public employee retirement system of Idaho on July 1, 1977 shall apply for membership in said system no later than July 1, 1978, in accordance with the provisions of [section 59-1309 \[59-1321\], Idaho Code](#). Any existing retirement program, shall be terminated prior to the date of entry into the public employee retirement system of Idaho.

History.

1974, ch. 253, § 7, p. 1656; am. 1977, ch. 161, § 1, p. 417; am. and redesisg. 1980, ch. 106, § 19, p. 231.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 59-1211.

The term "this act" near the beginning of the section refers to S.L. 1974, Chapter 253, which is codified as §§ 67-5761 to 67-5763 and 67-5767 to 67-5770.

The bracketed insertion in the second paragraph was added by the compiler as § 59-1309 was amended and redesignated as § 59-1321 by S.L. 1990, ch. 231, § 17.

§ 67-5771. Group insurance account created — Administration — Perpetual appropriation. — There is hereby established in the agency asset fund in the state treasury a special account, the “Group Insurance Account,” which shall be administered exclusively for the purposes of this act. This account shall consist of all contributions collected pursuant to this act, and all interest earned upon any moneys in the account.

History.

I.C., § 59-1213, as added by 1975, ch. 55, § 2, p. 117; am. and redesign. 1980, ch. 106, § 20, p. 231; am. 1981, ch. 99, § 1, p. 145; am. 1993, ch. 221, § 13, p. 747.

STATUTORY NOTES

Compiler’s Notes.

This section was formerly compiled as § 59-1213.

The term “this act” refers to S.L. 1975, Chapter 55, which is compiled as §§ 67-5769, 67-5771, and 67-5772.

§ 67-5772. Remittance of contributions — Collection of delinquencies. — (1) Between the first and twentieth day of each month, each employer, or, where the employer's payroll is paid separately by departments, each department of each employer, shall remit to the director of the department of administration all contributions required of it and its employees on the basis of salaries paid by it during the previous month. These remittances shall be accompanied by such reports as required by rules of the director of the department of administration.

(2) If any employer shall fail or refuse to remit any such contributions within thirty (30) days after the date due, the director of the department of administration may certify to the state treasurer the fact of such failure or refusal and the amount of the delinquent contribution or contributions, together with a request that such amount be set over from funds of the delinquent employer to the credit of the group insurance fund [group insurance account]. A copy of such certification and request shall be furnished the delinquent employer.

(3) Within ten (10) days after receipt of such request, the state controller shall draw his warrant for payment of such amount out of moneys in the state treasury allocated to the use of such employer during the current fiscal year. If such moneys are not so available, the director of the department of administration shall take any legal steps necessary to collect such amount.

History.

I.C., § 59-1214, as added by 1975, ch. 55, § 3, p. 117; am. and redesign. 1980, ch. 106, § 21, p. 231; am. 1993, ch. 221, § 14, p. 747; am. 1994, ch. 180, § 224, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-2001 et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

This section was formerly compiled as § 59-1214.

The bracketed insertion near the end of subsection (2) was added by the compiler to correct the name of the referenced account. See § 67-5771.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 224 was effective January 2, 1995.

§ 67-5773. Powers and duties — Risk management. — (1) The director of the department of administration shall:

- (a) Determine the nature and extent of needs for insurance coverages of all kinds, other than life and disability insurances, as to risks and property of all offices, departments, divisions, boards, commissions, institutions, agencies and operations of the government of the state of Idaho, the premiums on which are payable in whole or in part from funds of the state.
- (b) Determine the character, terms, and amounts of insurance coverages required by such needs.
- (c) Within funds available therefor from each respective office, department, division, board, commission, institution, agency or operation with respect to coverage to be provided to it, negotiate for, procure, purchase, and have placed or continued in effect all such insurance coverages and services as may reasonably be obtainable, whether from insurers or brokers duly authorized to transact business in this state.
- (d) Administer all such coverages on behalf of the insured, including making and settlement of loss claims arising thereunder. The director, with the advice of the attorney general, may cause suit to be brought with respect to any such coverage or loss.
- (e) Within available funds and personnel, make periodic inspection or appraisal of premises, property and risks as to conditions affecting insurability, risk, and premium rate, and submit a written report of each such inspection or appraisal together with recommendations, if any, to the officer, department, or agency in direct charge of such premises, property or risks.
- (f) Perform such other duties and exercise such other powers as are provided by law.
- (g) Establish a risk management advisory committee. The director shall consult with the advisory committee in the performance of those duties enumerated above.

(2) As to all such needs and coverages, the director shall give due consideration to information furnished by and recommendations of any office, department, division, board, commission, institution or agency.

History.

I.C., § 67-5754, as added by 1974, ch. 252, § 3, p. 1647; I.C., § 67-5755, as corrected by 1975, ch. 195, § 2, p. 540; am. and redesign. 1980, ch. 106, § 22, p. 231; am. 1993, ch. 221, § 15, p. 747.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

This section was formerly compiled as § 67-5755.

CASE NOTES

[Named insureds.](#)

[Recovery against insurer.](#)

[Named Insureds.](#)

Idaho State University (ISU) was the sole insured party under disputed insurance policy; neither the state of Idaho nor the bureau of risk management were named insureds in the policy and they were not the same legal entity as ISU which enjoys its own independent legal status. [State v. Continental Cas. Co., 121 Idaho 938, 829 P.2d 528 \(1992\).](#)

[Recovery Against Insurer.](#)

In order for university to prevail against insurer, it needed to show that it had incurred a loss or paid a claim which insurer was obligated to cover under the insurance policy. The record demonstrated that in the instant case it was bureau of risk management and not the university that ultimately paid for the defense and settlement of the claim; consequently, in the absence of a showing by the university that it had suffered a loss as contemplated by the language of the insurance policy, the university had no claim upon

which it could recover from insurer. *State v. Continental Cas. Co.*, 121 Idaho 938, 829 P.2d 528 (1992).

State's retained risk program, from which the settlement of a lawsuit against a state university was paid, did not constitute insurance for the university, but "self-insurance" for the state. Therefore, the district court did not err in concluding that the "other insurance" clause in insurer's policy was not triggered by the state's payment of the university's losses. *State & Idaho State Univ. v. Continental Cas. Co.*, 126 Idaho 178, 879 P.2d 1111 (1994).

OPINIONS OF ATTORNEY GENERAL

University of Idaho.

The university of Idaho cannot use appropriated funds to purchase its own risk or property insurance but may use funds other than state funds to purchase whatever risk or property insurance it wishes. OAG 2014-3.

Department of Fish and Game.

Absent the consent of the director of the department of administration and the purchase of private liability insurance by the division of insurance management, the Idaho department of fish and game is not authorized to provide a private policy of insurance for the benefit of the United States. OAG 2019-1.

§ 67-5774. Position of risk manager created — Appointment — Employment of personnel. — There is hereby created the position of risk manager in the department of administration. The risk manager shall be selected and retained subject to the provision of chapter 53, title 67, Idaho Code. The risk manager may, with the agreement of the director, employ and fix the compensation of such additional personnel, and contract for such professional or technical services or assistance, as the manager may deem necessary or desirable for the performance of the duties of the position.

History.

I.C., § 67-5753, as added by 1974, ch. 252, § 2, p. 1647; I.C., § 67-5754, as corrected by 1975, ch. 195, § 1, p. 540; am. and redesign. 1980, ch. 106, § 23, p. 231; am. 1993, ch. 221, § 16, p. 747.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5754.

§ 67-5775. Risk management guidelines. — In determining need for, form and amount of, procuring and administering insurance coverages, the director of the department of administration shall give due consideration to:

(1) omission of insurance policy coverage as to property and risks as to which insurance and claim administration costs may be disproportionately great in reference to the amount of risk; (2) ultimate economies possible through use of reasonable deductions; (3) use of comprehensive coverages and blanket coverages insuring property and risks of two (2) or more offices, departments, divisions, boards, commissions, institutions and agencies; (4) reliability of and service provided by insurers to be selected as insurance carriers, as well as financial condition and competitive premium rate; (5) means through which risks may be improved with ultimate savings to the state through reduction in insurance losses and costs.

History.

I.C., § 67-5755, as added by 1974, ch. 252, § 4, p. 1647; I.C., § 67-5756, as corrected by 1975, ch. 195, § 3, p. 540; am. and redesign. 1980, ch. 106, § 24, p. 231; am. 1993, ch. 221, § 17, p. 747.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5756.

OPINIONS OF ATTORNEY GENERAL

University of Idaho.

The university of Idaho cannot use appropriated funds to purchase its own risk or property insurance but may use funds other than state funds to purchase whatever risk or property insurance it wishes. OAG 2014-3.

§ 67-5776. Retained risks account — Purposes — Amount — Limit — Appropriation — Investment. — (1) There is hereby created an account in the agency asset fund in the state treasury to be designated the “retained risk account.” The account shall be used solely for payment of premiums, costs of maintaining the operation of the risk management office [risk management program], or upon losses not otherwise insured and suffered by the state as to property and risks which at the time of the loss were eligible for such payment under guidelines theretofore issued by the director of the department of administration.

(2) In addition to moneys, if any, appropriated to the account by the legislature, the director shall deposit with the state treasurer for credit to the retained risk account:

- (a) the gross amount of all premiums and surcharges received under [section 67-5777, Idaho Code](#);
- (b) all refunds received on account of insurance policies cancelled before expiration;
- (c) all refunds or returns under experience rating arrangements with insurers;
- (d) savings from amounts otherwise appropriated for the purchase of insurance or conduct of the risk management office operation;
- (e) all net proceeds of the sale of salvage resulting from losses paid out of the retained risk account.

(3) The director may from time to time develop guidelines as to properties and risks eligible for payment out of the retained risk account, and as to making of claim and proof of loss.

(4) All moneys placed in the account are hereby perpetually appropriated for the purposes of this section. All expenditures from the account shall be paid out in warrants drawn by the state controller upon presentation of proper vouchers from the director of the department of administration.

(5) Pending such use, surplus moneys in the account shall be invested by the state treasurer in the same manner as provided under [section 67-1210](#),

Idaho Code, with respect to other surplus or idle moneys in the state treasury. Interest earned on the investments shall be returned to the account.

History.

I.C., § 67-5756, as added by 1974, ch. 252, § 5, p. 1647; **I.C., § 67-5757**, as corrected by 1975, ch. 195, § 4, p. 540; am. and redesign. 1980, ch. 106, § 25, p. 231; am. 1981, ch. 99, § 2, p. 145; am. 1993, ch. 221, § 18, p. 747; am. 1994, ch. 180, § 225, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-2001 et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

This section was formerly compiled as § 67-5757.

The bracketed insertion in subsection (1) was added by the compiler to correct the name of the referenced agency. See <https://adm.idaho.gov/insurance-and-internal-sup-port/risk-management-program>.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller."

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 225 was effective January 2, 1995.

CASE NOTES

Lawsuit Against State University.

State's retained risk program, from which the settlement of a lawsuit against a state university was paid, did not constitute insurance for the university, but "self-insurance" for the state. Therefore, the district court did not err in concluding that the "other insurance" clause in insurer's policy was not triggered by the state's payment of the university's losses. *State & Idaho State Univ. v. Continental Cas. Co.*, 126 Idaho 178, 879 P.2d 1111 (1994).

§ 67-5777. Interdepartmental transactions — Purposes — Appropriation. — (1) The director of the department of administration shall charge each office, department, division, board, commission, institution, agency and operation for which the department provides insurance coverage and receive payment in advance for the reasonably apportioned share of the cost incurred. To the amount otherwise so found due for payment of premium to the insurer, the director shall add separately stated surcharges of such percentages, rates, or amounts as may reasonably be required:

(a) to pay the costs of maintaining the operation of the risk unit, including salaries, wages, travel and other current expenses;

(b) to provide for initial funding and maintenance thereafter of the retained risk account, as reasonably apportioned from time to time among those offices, departments, divisions, boards, commissions, institutions, agencies and operations sharing risk coverage by such account. The amount of this surcharge is subject to adjustment as required by subsection (4) of [section 67-5776, Idaho Code](#).

(2) All such charges and payments shall not exceed the current appropriation or funds available for the purpose of the affected office, department, division, board, commission, institution, agency or operation. On or before the first day of August of each year, the director shall furnish each department with an estimate of the cost of insurance or coverage for the upcoming fiscal year.

(3) Funds received under the provisions of this section shall be deposited to the retained risk account and are hereby continually appropriated for payment of such salaries, wages, travel, premiums, losses, and other expenses.

History.

[I.C., § 67-5757](#), as added by 1974, ch. 252, § 6, p. 1647; [I.C., § 67-5758](#), as corrected by 1975, ch. 195, § 5, p. 540; am. and redesign. 1980, ch. 106, § 26, p. 231; am. 1993, ch. 221, § 19, p. 747.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 67-5758.

Effective Dates.

Section 15 of S.L. 1974, ch. 252 provided that the act would be in full force and effect on and after July 2, 1974.

§ 67-5778. Collection of delinquent payments. — (1) If any office, department, division, board, commission, institution, agency, or operation of the government of the state of Idaho shall fail or refuse to remit any such payment as charged by the director of the department of administration within thirty (30) days after the date due when funds have been appropriated, the director may certify to the state treasurer the fact of such failure or refusal and the amount of the delinquent payment, together with the request that such amount be set over from funds of the delinquent department to the credit of the retained risk account. A copy of such certification and request shall be furnished the delinquent department.

(2) Within ten (10) days after receipt of such request, the state controller shall draw a warrant for payment of such amount out of moneys in the state treasury allocated to the use of such department during the current fiscal year. If such moneys are not so available, the director, department of administration shall take any legal steps necessary to collect such amount.

History.

I.C., § 67-5759, as added by 1975, ch. 195, § 6, p. 540; am. and redesign. 1980, ch. 106, § 27, p. 231; am. 1993, ch. 221, § 20, p. 747; am. 1994, ch. 180, § 226, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-2001 et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

This section was formerly compiled as § 67-5759.

Effective Dates.

Section 8 of S.L. 1975, ch. 195 provided that the act should take effect on and after July 1, 1975.

Section 21 of S.L. 1993, ch. 221 provided that the act shall be in full force and effect on July 1, 1993.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 226 was effective January 2, 1995.

§ 67-5779. Definitions. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 18, effective July 1, 2018. For present comparable provisions, see § 67-834.

History.

I.C., § 67-5779, as added by 2008, ch. 332, § 2, p. 917.

STATUTORY NOTES

Prior Laws.

Former § 67-5779, which comprised **I.C., § 67-5779**, as added by 1998, ch. 256, § 60, p. 825, was repealed by S.L. 2000, ch. 230, § 1, effective July 1, 2000.

Idaho Code § 67-5780

§ 67-5780. Integrated property records system — Transfer of responsibility. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 19, effective July 1, 2018. For present comparable provisions, see § 67-834.

History.

I.C., § 67-5780, as added by 2008, ch. 332, § 2, p. 917.

STATUTORY NOTES

Prior Laws.

Former § 67-5780, which comprised **I.C., § 67-5780**, as added by 1998, ch. 256, § 61, p. 825, was repealed by S.L. 2000, ch. 230, § 1, effective July 1, 2000.

§ 67-5781. Agencies to provide records and data. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 20, effective July 1, 2018.

History.

I.C., § 67-5781, as added by 2008, ch. 332, § 2, p. 917; am. 2015, ch. 141, § 182, p. 379.

STATUTORY NOTES

Prior Laws.

Former § 67-5781, which comprised I.C., § 67-5781, as added by 1998, ch. 256, § 62, p. 825, was repealed by S.L. 2000, ch. 230, § 1, effective July 1, 2000.

§ 67-5782. Responsibility for quality. [Repealed.]

Repealed by S.L. 2018, ch. 258, § 21, effective July 1, 2018. For present comparable provisions, § 67-836.

History.

I.C., § 67-5782, as added by 2008, ch. 332, § 2, p. 918.

Idaho Code Ch. 58

• [Title 67](#) •, « [Ch. 58](#) »

Chapter 58

PROTECTION OF NATURAL RESOURCES

Sec.

67-5801. Scope and purpose.

67-5802. Protection plan — Procedure — Responsibilities of state agencies
— Annual revision — Approval.

67-5803. Training institutes for suppression of natural resources disasters.

67-5804. Proclamation of natural resources disaster — Aid by agency —
Claim for reimbursement.

67-5805. Legislative findings and intent.

67-5806. Declaration of emergency.

67-5807. Governor — Executive orders.

§ 67-5801. Scope and purpose. — The purpose of this act is to provide an orderly, comprehensive plan for the protection of the natural resources of the state and for the suppression of dangers or threats thereto; to provide training for state employees in prevention and suppression of natural resources disasters; and, to authorize the governor to marshal the manpower and resources of state agencies in the event of such a disaster.

History.

1968 (2nd E.S.), ch. 8, § 1, p. 17.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1968 (2nd E.S.), Chapter 8, which is compiled as §§ 67-5801 to 67-5804.

§ 67-5802. Protection plan — Procedure — Responsibilities of state agencies — Annual revision — Approval. — The governor shall prepare a plan providing for the protection of the state's natural resources. The plan shall set forth procedure for the protection of the state's natural resources in the event of any natural resources disaster that may be proclaimed by the governor. Specifically, the plan shall set forth the functions and responsibilities of designated state agencies within the executive branch of state government in the event of such a disaster. The governor shall cause the plan to be reviewed and revised at least annually. Before becoming effective, such plan, or revision thereof, shall be approved by the board of land commissioners.

History.

1968 (2nd E.S.), ch. 8, § 2, p. 17.

STATUTORY NOTES

Cross References.

Board of land commissioners, Idaho **Const., Art. IX, § 7** and **§ 58-101 et seq.**

§ 67-5803. Training institutes for suppression of natural resources disasters. — The governor shall cause periodic training institutes to be conducted throughout the state, the purpose of which shall be the training of state employees in the protection of natural resources and suppression of natural resources disasters. The governor shall designate the employees of the executive branch of state government who shall be required to attend such training institutes.

History.

1968 (2nd E.S.), ch. 8, § 3, p. 17.

§ 67-5804. Proclamation of natural resources disaster — Aid by agency — Claim for reimbursement. — After proclaiming the existence of a natural resources disaster by executive proclamation, the governor may require any agency of the executive branch of state government to aid in the suppression of such disaster. As used herein, the term “aid” includes the furnishing of all necessary manpower, materials, equipment, and facilities. If aid is furnished by any agency, the agency shall submit to the board of examiners a claim for expenses incurred in the suppression of such disaster. Following approval of the claim by the board of examiners, the agency shall be reimbursed from moneys appropriated for such purposes.

History.

1968 (2nd E.S.), ch. 8, § 4, p. 17; am. 1976, ch. 51, § 19, p. 152.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

Effective Dates.

Section 21 of S.L. 1976, ch. 51 provided that the act should be in full force and effect on and after July 1, 1977.

§ 67-5805. Legislative findings and intent. — (1) Section 1, article I, of the constitution of the state of Idaho provides: “All men are by nature free and equal, and have certain inalienable rights, among which are enjoying and defending life and liberty; acquiring, possessing and protecting property; pursuing happiness and securing safety.” It is the duty and right of the legislature and the governor to protect the state, its citizens and property. Section 36-103(a), Idaho Code, provides: “All wildlife, including all wild animals, wild birds, and fish, within the state of Idaho, is hereby declared to be the property of the state of Idaho.” The state of Idaho therefore has the responsibility to manage the big game animals of the state.

(2) The Idaho legislature finds and declares that the state’s citizens, businesses, hunting, tourism and agricultural industries, private property and wildlife, are immediately and continuously threatened and harmed by the sustained presence and growing population of Canadian gray wolves in the state of Idaho. The Idaho legislature, therefore, finds the population of gray wolves in Idaho, having been introduced into the state in 1995, over the united objection of the Idaho congressional delegation, Idaho legislature, Idaho governor, Idaho counties and numerous Idaho agricultural groups who were gravely concerned with the negative effects this action would impose on Idaho and Idahoans, is now many times exceeding the target number originally set by the federal government and the number set in Idaho’s federally approved 2002 wolf management plan. The U.S. fish and wildlife service (USFWS) has delisted the gray wolf in Idaho in 2008 and 2009 returning management to the state, only to be sued both times by environmental groups forcing the wolf to be relisted as endangered. As a result of all the above, the legislature finds that public safety has been compromised, economic activity has been disrupted and private and public property continue to be imperiled. The uncontrolled proliferation of imported wolves on private land has produced a clear and present danger to humans, their pets and livestock, and has altered and hindered historical uses of private and public land, dramatically inhibiting previously safe activities such as walking, picnicking, biking, berry picking, hunting and fishing. The continued uncontrolled presence of gray wolves represents an unfunded mandate, a federal commandeering of both state and private

citizen resources and a government taking that makes private property unusable for the quiet enjoyment of property owners. An emergency existing therefore, it is the intent of the legislature to regulate the presence of Canadian gray wolves in Idaho in order to safeguard the public, wildlife, economy and private property against additional devastation to Idaho's social culture, economy and natural resources, and to preserve the ability to benefit from private and public property within the state and experience the quiet enjoyment of such property.

History.

I.C., § 67-5805, as added by 2011, ch. 334, § 1, p. 976.

STATUTORY NOTES

Compiler's Notes.

For more on wolf management in Idaho, see <https://idfg.idaho.gov/conservation/wolf/management-history>.

The letters "USFWS" enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of S.L. 2011, ch. 334 declared an emergency. Approved April 19, 2011.

RESEARCH REFERENCES

ALR. — Construction and application of state prohibitions of unfunded mandates. 76 A.L.R.6th 543.

§ 67-5806. Declaration of emergency. — A disaster emergency, as defined in section 46-1002(2) and (3), Idaho Code, is in existence as a result of the introduction of Canadian gray wolves, which have caused and continue to threaten vast devastation of Idaho's social culture, economy and natural resources. The geographical extent of this emergency shall include any part of the state of Idaho where gray wolves have been sighted and whose sighting has been documented or otherwise confirmed by the office of species conservation or the department of fish and game.

History.

I.C., § 67-5806, as added by 2011, ch. 334, § 2, p. 976; am. 2016, ch. 118, § 21, p. 331.

STATUTORY NOTES

Cross References.

Department of fish and game, § 36-101 et seq.

Office of species conservation, § 67-818.

Amendments.

The 2016 amendment, by ch. 118, updated the statutory references in the first sentence of the section in light of the 2016 amendment of § 46-1002.

Effective Dates.

Section 4 of S.L. 2011, ch. 334 declared an emergency. Approved April 19, 2011.

§ 67-5807. Governor — Executive orders. — (1) Pursuant to this act, the governor may issue executive orders and proclamations and amend or rescind such orders and proclamations. Executive orders and proclamations have the force and effect of law. A disaster emergency may be declared by executive order or proclamation of the governor if the governor finds any of the following:

- (a) Any Canadian gray wolf within the state is a carrier of a disease harmful to humans, livestock, pets and wild game and that there is a risk of transmission of such disease to humans, livestock, pets or wild game;
- (b) The potential of human-wolf conflict exists and that the Canadian gray wolf is frequenting areas inhabited by humans or showing habituated behavior toward humans;
- (c) That the potential for livestock-wolf conflict exists and that the Canadian gray wolf is frequenting areas that are largely ranchland with livestock or showing evidence of habituated behavior toward livestock;
- (d) The numbers of Canadian gray wolves are such that there is an impact to Idaho big game herds as identified in the wolf management plan of 2002, and that there is evidence that increasing the number of wolves beyond one hundred (100) has had detrimental impacts on big game populations, the economic viability of the Idaho department of fish and game, outfitters and guides, and others who depend on a viable population of big game animals;
- (e) The numbers of big game animals have been significantly impacted below that of recent historical numbers and that there has been a measurable diminution in the value of businesses tied to outfitting and other game or hunting based businesses.

(2) The executive order or proclamation shall direct the office of species conservation to initiate emergency proceedings in accordance with [section 67-5247, Idaho Code](#). Any person may challenge an action or proposed action of the office of species conservation by following the appeals process prescribed by the Idaho administrative procedure act, chapter 52, title 67, Idaho Code.

(3) The state of disaster emergency shall continue until the governor finds that either gray wolves are delisted in Idaho with full state management restored or the threat has been dealt with to the extent that emergency conditions no longer exist. When either or both of these events occur, the governor shall terminate the state of disaster emergency by executive order or proclamation. Provided however, that no state of disaster emergency pursuant to the provisions of this act may continue for longer than one (1) year. The legislature by concurrent resolution may terminate a state of disaster emergency at any time. Thereupon, the governor shall issue an executive order or proclamation ending the state of disaster emergency. All executive orders or proclamations issued pursuant to this section shall indicate which of the conditions in this section exist, the area or areas threatened and the actions planned to resolve the issue, including contracting with USDA-APHIS wildlife services. An executive order or proclamation shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless the circumstances attendant upon the disaster prevent or impede, be promptly filed with the office of species conservation, the department of fish and game, the office of the secretary of state and the office of the sheriff of each county where the state of disaster emergency applies.

History.

I.C., § 67-5807, as added by 2011, ch. 334, § 3, p. 976.

STATUTORY NOTES

Cross References.

Department of fish and game, § 36-101 et seq.

Office of species conservation, § 67-818.

Secretary of state, § 67-901 et seq.

Compiler's Notes.

For further information on the USDA-APHIS wildlife services, see <https://www.aphis.usda.gov/aphis/ourfocus/wildlifedamage/> SA Program Overview.

The term “this act” in the introductory paragraph in subsection (1) refers to S.L. 2011, Chapter 334, which is codified as §§ 67-5805 to 67-5807.

Effective Dates.

Section 4 of S.L. 2011, ch. 334 declared an emergency. Approved April 19, 2011.

Chapter 59

COMMISSION ON HUMAN RIGHTS

Sec.

67-5901. Purpose of chapter.

67-5902. Definitions.

67-5903. Creation of commission on human rights — Members — Appointment.

67-5904. Organization of commission — Compensation of members.

67-5905. Administrative support — Appointment of commission staff — Duties of administrator.

67-5906. Powers and duties of commission.

67-5907. Complaints — Procedure on complaint.

67-5907A. Compliance with the Idaho tort claims act.

67-5908. Procedure in district court.

67-5908a. Preexisting rights of action. [Repealed.]

67-5909. Acts prohibited.

67-5909A. Acts prohibited — Public employment — Public education.

67-5910. Limitations.

67-5911. Reprisals for opposing unlawful practices.

67-5912. Persons immune from civil personal liability for acts performed in connection with carrying out provisions of this act.

§ 67-5901. Purpose of chapter. — The general purposes of this chapter are:

(1) To provide for execution within the state of the policies embodied in the federal Civil Rights Act of 1964, as amended, and the Age Discrimination in Employment Act of 1967, as amended, and Titles I and III of the Americans with Disabilities Act.

(2) To secure for all individuals within the state freedom from discrimination because of race, color, religion, sex or national origin or disability in connection with employment, public accommodations, and real property transactions, discrimination because of race, color, religion, sex or national origin in connection with education, discrimination because of age in connection with employment, and thereby to protect their interest in personal dignity, to make available to the state their full productive capacities, to secure the state against domestic strife and unrest, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individuals within the state.

History.

1969, ch. 459, § 1, p. 1277; am. 1982, ch. 83, § 1, p. 151; am. 1988, ch. 225, § 1, p. 433; am. 1994, ch. 268, § 1, p. 825; am. 2005, ch. 278, § 1, p. 870.

STATUTORY NOTES

Cross References.

Civil rights, criminal penalties, § 18-7301 et seq.

Idaho women's commission, § 67-6001 et seq.

Federal References.

The federal Civil Rights Act of 1964, referred to in subsection (1), appears generally as [42 U.S.C.S. § 2000a et seq.](#)

The Age Discrimination in Employment Act of 1967, referred to in subsection (1), is compiled as [29 U.S.C.S. § 621 et seq.](#)

Titles I and III of the Americans with Disabilities Act, referred to in subsection (1), are codified as 42 U.S.C.S. § 12111 et seq. and 42 U.S.C.S. § 12131 et seq., respectively.

CASE NOTES

Applicability.

Evidence.

Exception to preamble.

Perceived disability.

Private cause of action.

Punitive damages.

Religious discrimination.

Sexual harassment.

Standard of proof.

Applicability.

The protections of the Idaho Human Rights Act are limited to employees and do not apply to independent contractors. *Ostrander v. Farm Bureau Mut. Ins. Co.*, 123 Idaho 650, 851 P.2d 946 (1993).

The word “employer” in this section should not be construed to allow individual liability against agents or employees who allegedly retaliated against another employee who opposed unlawful discriminatory practices. *Foster v. Shore Club Lodge, Inc.*, 127 Idaho 921, 908 P.2d 1228 (1995).

Under Idaho Human Rights Act, supervisor could not be held liable as there is no individual liability of an employee. *Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996).

Despite fact that employee testified to a minimum of 275 instances of harassing conduct, her hostile work environment claim could form the basis for only one violation of the Idaho Human Rights Act. *Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996).

Evidence.

Sufficient evidence supported jury's finding that supervisor's conduct was unwelcome to employee and actionable under Idaho Human Rights Act, where judge and jury heard employee's testimony regarding supervisor's threat to fire anyone who did not "fit in", and supervisor considered that anyone who could not tolerate crude and vulgar language did not "fit in," and jury heard testimony detailing egregious conduct including offensive words themselves. *Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996).

District court erred in granting a school district, superintendent, and principal summary judgment on an assistant principal's retaliation claim, because there was an issue of material fact as to whether the reasons they proffered for their adverse action against the assistant was pretext for retaliation; the assistant provided sufficient evidence beyond his prima facie case, demonstrating that the claimed motives for the adverse employment action against him were not believable. *Frogley v. Meridian Joint Sch. Dist. No. 2*, 155 Idaho 558, 314 P.3d 613 (2013).

Exception to Preamble.

Where the preamble, this section, to a statute conflicts with a later, more specific, unambiguous statutory provision, the latter is considered to be an exception to the preamble, and the preamble does not confer or enlarge powers. *Idaho Commission on Idaho Comm'n on Human Rights v. Campbell*, 95 Idaho 215, 506 P.2d 112 (1973).

Perceived Disability.

Summary judgment was improper on an employee's disability discrimination claim, where a coworker's affidavit was direct evidence that a supervisor regarded the employee as being substantially limited in the major life activity of working, thereby raising an issue of fact as to whether the employer perceived the employee as disabled due to his insulin dependent diabetes and terminated him based on that perceived disability. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 179 P.3d 1064 (2008).

Private Cause of Action.

Although § 18-7301 merely classifies discriminatory acts as misdemeanors under the penal code, like this chapter, § 18-7301 also aims to protect against discrimination because of race, color, religion, sex, and

national origin in connection with employment, public accommodations, or education; however, unlike this section, § 18-7301 provides no private cause of action. *Foster v. Shore Club Lodge, Inc.*, 127 Idaho 921, 908 P.2d 1228 (1995).

Punitive Damages.

In the absence of language in the Idaho Human Rights Act (IHRA) limiting liability against the state, the more specific imposition of liability under IHRA controls over the more general immunity contained in § 6-918; therefore, court found that § 6-918 did not preclude the entry of a punitive damages award against the state. *Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996).

Religious Discrimination.

Because plaintiff, golfer suing country club for religious discrimination for not permitting him to play second round of tournaments on a day other than Sunday, failed to notify the Idaho human rights commission prior to filing action in federal court, action must be dismissed under 42 U.S.C.S. § 2000a-3(c). *Boyle v. Jerome Country Club*, 883 F. Supp. 1422 (D. Idaho 1995).

Summary judgment in favor of an employer was affirmed where the employer had terminated an employee after he posted Biblical verses in his cubicle condemning homosexuality and refused to remove them; his claims of disparate treatment and failure to accommodate failed under both Title VII of the Civil Rights Act of 1964, 42 U.S.C.S. § 2000e et seq., and the Idaho Human Rights Act. *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599 (9th Cir. 2004).

Sexual Harassment.

Trial court correctly ruled that the following evidence was irrelevant to plaintiff's quid pro quo sexual harassment case: (1) evidence of sexual harassment not directly related to her case, (2) evidence of hostile working conditions, (3) evidence that supervisor and alleged harasser were friends, and (4) evidence regarding penalties received by other employees for dissimilar violations of work rules. *De Los Santos v. J.R. Simplot Co.*, 126 Idaho 963, 895 P.2d 564 (1995).

Standard of Proof.

The same standards of proof applicable in Title VII cases govern actions under the Human Rights Act; thus, if the employee's claim failed under Title VII, it also failed under the **Human Rights Act**. *Sengupta v. Morrison-Knudsen Co.*, 804 F.2d 1072 (9th Cir. 1986).

Cited *James v. KID Broadcasting Corp.*, 559 F. Supp. 1153 (D. Idaho 1983); *Stevenson v. Potlatch Corp.*, 674 F. Supp. 1410 (D. Idaho 1987); *Frazier v. J.R. Simplot Co.*, 136 Idaho 100, 29 P.3d 936 (2001); *Stout v. Key Training Corp.*, 144 Idaho 195, 158 P.3d 971 (2007).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Employers Maneuver Through Inconsistent and Confusing Discrimination Laws While Awaiting Formal Human Rights Expansion, Pam Howland. 52 Idaho L. Rev. 913 (2016).

ALR. — Individual liability of supervisors, managers, officers or co-employees for discriminatory actions under state **Civil Rights Act**. 83 A.L.R.5th 1.

Propriety of treating separate entities as one for determining number of employees required by Title VII of Civil Rights Act of 1964 (42 U.S.C.A. § 2000e(b)) for action against “employer”. 160 A.L.R. Fed. 441.

What constitutes “willful violation” under age discrimination in employment act (29 U.S.C. §§ 626 et seq.) entitling victim to liquidated damages. 165 A.L.R. Fed. 1.

§ 67-5902. Definitions. — In this chapter, unless the context otherwise requires:

(1) “Commission” means the commission on human rights created by this chapter;

(2) “Commissioner” means a member of the commission;

(3) “Discriminatory practice” means a practice designated as discriminatory under the terms of this chapter;

(4) “National origin” includes the national origin of an ancestor;

(5) “Person” includes an individual, association, corporation, joint apprenticeship committee, joint-stock company, labor union, legal representative, mutual company, partnership, any other legal or commercial entity, the state, or any governmental entity or agency;

(6) “Employer” means a person, wherever situated, who hires five (5) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year whose services are to be partially or wholly performed in the state of Idaho, except for domestic servants hired to work in and about the person’s household. The term also means:

(a) A person who as contractor or subcontractor is furnishing material or performing work for the state;

(b) Any agency of or any governmental entity within the state; and

(c) Any agent of such employer.

(7) “Employment agency” means a person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person;

(8) “Labor organization” includes:

(a) An organization of any kind, an agency or employee representation committee, group, association, or plan in which employees participate

and which exists for the purpose, in whole or in part, of dealing with employers concerning grievance, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(b) A conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization; or

(c) An agent of a labor organization.

(9) “Place of public accommodation” means a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold, or otherwise made available to the public;

(10) “Educational institution” means a public or private institution and includes an academy, college, elementary or secondary school, extension course, kindergarten, nursery, school system, or university and a business, nursing, professional, secretarial, technical, or vocational school and includes an agent of an educational institution;

(11) “Real property” includes buildings, structures, real estate, lands, tenements, leaseholds, interests in real estate cooperatives, condominiums, and hereditaments, corporeal and incorporeal or any interest therein;

(12) “Real estate transaction” includes the sale, exchange, rental or lease of real property;

(13) “Housing accommodation” includes any improved or unimproved real property, or part thereof, which is used or occupied, or as the home or residence of one (1) or more individuals;

(14) “Real estate broker or salesman” means a person, whether licensed or not, who, for or with the expectation of receiving a consideration, lists, sells, purchases, exchanges, rents, or leases real property, or who negotiates or attempts to negotiate any of these activities, or who holds himself out as engaged in these activities, or who negotiates or attempts to negotiate a loan secured or to be secured by mortgage or other encumbrance upon real property, or who is engaged in the business of listing real property in a publication; or a person employed by or acting on behalf of any of these;

(15) “Disability” means a physical or mental condition of a person, whether congenital or acquired, which constitutes a substantial limitation to that person and is demonstrable by medically accepted clinical or laboratory diagnostic techniques. A person with a disability is one who (a) has such a disability, or (b) has a record of such a disability, or (c) is regarded as having such a disability;

(16) “Reasonable accommodation” means an adjustment which does not (a) unduly disrupt or interfere with the employer’s normal operations, (b) threaten the health or safety of the person with the disability or others, (c) contradict a business necessity of the employer, or (d) impose undue hardship on the employer based on the size of the employer’s business, the type of business, the financial resources, and the estimated cost and extent of the adjustment;

(17) “Readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include (a) the nature and cost of the action needed under this chapter, (b) the overall financial resources of the facility or facilities involved in the action, the number of persons employed at the facility, the effect on expenses and resources, or the impact otherwise of the action upon the operation of the facility, (c) the overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities, and (d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

History.

1969, ch. 459, § 2, p. 1277; am. 1976, ch. 342, § 1, p. 1140; am. 1982, ch. 83, § 2, p. 151; am. 1988, ch. 225, § 2, p. 433; am. 1991, ch. 335, § 1, p. 868; am. 1994, ch. 268, § 2, p. 825; am. 2005, ch. 278, § 2, p. 870.

CASE NOTES

Disability Defined.

Former employee with insulin-dependent diabetes was disabled because his diabetes and the treatment regimen that he had to follow substantially limited him in the major life activity of eating. *Davenport v. Idaho Dep't of Env'tl. Quality*, 469 F. Supp. 2d 861 (D. Idaho 2006).

RESEARCH REFERENCES

Idaho Law Review. — Way out West: A Comment Surveying Idaho State's Legal Protection of Transgender and Gender Non-Conforming Individuals, Comment. 49 Idaho L. Rev. 587 (2013).

§ 67-5903. Creation of commission on human rights — Members — Appointment. — There is hereby created in the office of the governor the Idaho commission on human rights to consist of nine (9) members, all of whom shall be appointed by the governor, with the advice and consent of the senate, each for a term of three (3) years. The commission shall be comprised as follows: one (1) member shall be representative of industry; one (1) member shall be representative of labor; and seven (7) members shall be appointed at large. Members shall be appointed to obtain, to the extent possible, broad representation of the diversity of individuals who comprise the population of the state of Idaho.

History.

1969, ch. 459, § 3, p. 1277; am. 1974, ch. 22, § 40, p. 592; am. 1976, ch. 342, § 2, p. 1140; am. 2005, ch. 278, § 3, p. 870.

CASE NOTES

Cited Idaho Comm'n on Idaho Comm'n on Human Rights v. Campbell, 95 Idaho 215, 506 P.2d 112 (1973).

§ 67-5904. Organization of commission — Compensation of members. — The commission shall annually select a president and vice president. Members shall each be compensated as provided by section 59-509(h), Idaho Code.

History.

1969, ch. 459, § 4, p. 1277; am. 1974, ch. 22, § 41, p. 592; am. 1975, ch. 176, § 1, p. 481; am. 1980, ch. 247, § 91, p. 582; am. 1992, ch. 120, § 1, p. 397; am. 2010, ch. 248, § 1, p. 636.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 248, deleted the former last two sentences, which read: “The commission may appoint a staff director to serve at its pleasure. Other subordinate staff necessary to accomplish the commission’s mission shall be subject to the provisions of chapter 53, title 67, Idaho Code.”

Effective Dates.

Section 2 of S.L. 1975, ch. 176 provided that the act should take effect on and after July 1, 1975.

§ 67-5905. Administrative support — Appointment of commission staff — Duties of administrator. — The director of the department of labor shall provide administrative support to the commission. The director shall appoint an administrator to the commission to serve at the director's pleasure. Any decision by the director regarding the appointment and tenure of the administrator shall be made with the advice and consent of the commission. The administrator shall attend all meetings of the commission, serve as its executive and administrative officer, have charge of its office and records, and, under the general supervision of the commission, be responsible for the administration of this act and the general policies and regulations adopted by the commission. Other subordinate staff necessary to accomplish the commission's mission shall be employees of the department of labor subject to the provisions of chapter 53, title 67, Idaho Code.

History.

1969, ch. 459, § 5, p. 1277; am. 1974, ch. 22, § 42, p. 592; am. 2010, ch. 248, § 2, p. 636.

STATUTORY NOTES

Cross References.

Duties of director of department of labor, § 72-1333.

Amendments.

The 2010 amendment, by ch. 248, rewrote the section heading, which formerly read: "Duties of staff director"; added the first three sentences; in the fourth sentence, substituted "administrator" for "staff director"; and added the last sentence.

Compiler's Notes.

The term "this act" in the third sentence refers to S.L. 1969, Chapter 459, which is compiled as §§ 67-5901 to 67-5906, 67-5909, 67-5910, and 67-5912.

Effective Dates.

Section 61 of S.L. 1974, ch. 22 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-5906. Powers and duties of commission. — The Idaho commission on human rights shall have the following powers and duties:

(1) To investigate complaints of alleged violation of this act and act upon its findings pursuant to the provisions contained in this chapter;

(2) To make bylaws for its own government and procedure not inconsistent with the laws of this state;

(3) To maintain an office in Ada county and other offices within the state as it may deem necessary;

(4) To meet and exercise its powers at any place within the state;

(5) To appear in court and before other administrative bodies;

(6) To cooperate or contract with individuals and state, local and other agencies, both public and private, including agencies of the federal government and of other states;

(7) To accept public grants or private gifts, bequests, or other payments;

(8) To receive and act on complaints;

(9) To furnish technical assistance requested by persons subject to this act to further compliance with the act or an order issued thereunder;

(10) To make studies appropriate to effectuate the purposes and policies of this act and to make the results thereof available to the public;

(11) To render at least annually a comprehensive written report to the governor and to the legislature. The report may contain recommendations of the commission for legislative or other action to effectuate the purposes and policies of this act.

(12) In accordance with chapter 52, title 67, Idaho Code, to adopt, promulgate, amend and rescind rules to effectuate the purposes and policies of this act, including rules requiring the posting or inclusion in advertising material of notices prepared or approved by the commission.

History.

1969, ch. 459, § 6, p. 1277; am. 1976, ch. 342, § 3, p. 1140; am. 1980, ch. 97, § 1, p. 214; am. 2001, ch. 183, § 36, p. 55.

STATUTORY NOTES

Compiler's Notes.

The term “this act” throughout the section refers to S.L. 1969, Chapter 459, which is compiled as §§ 67-5901 to 67-5906, 67-5909, 67-5910, and 67-5912.

CASE NOTES

Contested Case.

The department of employment was not required or entitled to appeal the findings and recommendations of the commission on human rights, since a hearing before the commission on a sex discrimination claim, held before the commission was granted authority to issue orders, was not a “contested case.” [Hoppe v. Nichols, 100 Idaho 133, 594 P.2d 643 \(1979\).](#)

RESEARCH REFERENCES

Idaho Law Review. — Idaho Employers Maneuver Through Inconsistent and Confusing Discrimination Laws While Awaiting Formal Human Rights Expansion, Pam Howland. 52 Idaho L. Rev. 913 (2016).

§ 67-5907. Complaints — Procedure on complaint. — (1) Any person who believes he or she has been subject to unlawful discrimination, or a member of the commission, may file a complaint under oath with the commission stating the facts concerning the alleged discrimination within one (1) year of the alleged unlawful discrimination.

(2) Upon receipt of such a complaint, the commission or its delegated investigator shall endeavor to resolve the matter by informal means prior to a determination of whether there are reasonable grounds to believe that unlawful discrimination has occurred. The commission or its delegated investigator shall conduct such investigation as may be necessary to resolve the issues raised by the facts set forth in the complaint.

(3) If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding, and dismiss the proceeding, and shall notify the complainant and the respondent of its action.

(4) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, it shall endeavor to eliminate such discrimination by informal means such as conference, conciliation and persuasion. No offer or counter offer of conciliation nor the terms of any conciliation agreement may be made public without the written consent of all the parties to the proceeding, nor used as evidence in any subsequent proceeding, civil or criminal. If the case is disposed of by such informal means in a manner satisfactory to the commission, the commission shall dismiss the proceeding, and shall notify the complainant and the respondent.

(5) If the commission finds reasonable grounds to believe that unlawful discrimination has occurred, and further believes that irreparable injury or great inconvenience will be caused the victim of such discrimination if relief is not immediately granted, or if conciliation efforts under subsection (4) have not succeeded, the commission may file a civil action seeking appropriate legal and equitable relief.

(6) A complainant may request dismissal of an administrative complaint at any time. Dismissals requested before three hundred sixty-five (365) calendar days from the date of filing of the administrative complaint may be granted at the discretion of the administrator who will attempt to contact all parties who have appeared in the proceeding and consider their interests. After three hundred sixty-five (365) calendar days, if the complaint has not been dismissed pursuant to subsection (3) of this section or the parties have not entered into a settlement or conciliation agreement pursuant to subsection (2) or (4) of this section or other administrative dismissal has not occurred, the commission shall, upon request of the complainant, dismiss the complaint and notify the parties.

History.

[I.C., § 67-5907](#), as added by 1980, ch. 97, § 2, p. 214; am. 1998, ch. 155, § 1, p. 528; am. 2010, ch. 248, § 3, p. 636.

STATUTORY NOTES

Prior Laws.

Former § 67-5907, which comprised S.L. 1969, ch. 459, § 7, p. 1277, was repealed by S.L. 1976, ch. 342, § 6.

Amendments.

The 2010 amendment, by ch. 248, substituted “administrator” for “staff director” in subsection (6).

CASE NOTES

[Procedure.](#)

[Timeliness.](#)

[Procedure.](#)

The framework for analyzing a retaliation claim is: a plaintiff must show (1) involvement in a protected activity, (2) an adverse employment action, and (3) a causal link between the two. Thereafter, the burden of production shifts to the employer to present a legitimate reason for the adverse employment action. Once the employer carries this burden, plaintiff must

demonstrate a genuine issue of material fact as to whether the reason advanced by the employer was a pretext. Only then does the case proceed beyond the summary judgment stage. A plaintiff may establish pretext either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence. [Frogley v. Meridian Joint Sch. Dist. No. 2](#), 155 Idaho 558, 314 P.3d 613 (2013).

Timeliness.

Plaintiff's complaint alleging claims under this chapter could not be saved from dismissal on statutory time limitation grounds on the basis of a continuing violations theory, because the acts plaintiff complained of — being placed on administrative leave, being forced to undergo physical or psychiatric examinations, being threatened with termination, being forced to obtain a "return to work" authorization, and being placed on a performance improvement plan — were all identifiable, separate, and discrete acts. [Mallard v. Battelle Energy Alliance, LLC](#), 2013 U.S. Dist. LEXIS 80506 (D. Idaho June 6, 2013).

Employment discrimination case, based on a performance improvement plan (PIP), was time-barred because the employee filed his charge with the EEOC nearly two years after receipt of the PIP, which was well over both the one-year statutory deadline for alleged state law violations in this section and the 300-day deadline for alleged federal law violations in [42 U.S.C.S. § 12117\(d\)](#). [Hutchins v. DirecTV Customer Serv.](#), 963 F. Supp. 2d 1021 (D. Idaho 2013).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Employers Maneuver Through Inconsistent and Confusing Discrimination Laws While Awaiting Formal Human Rights Expansion, Pam Howland. 52 Idaho L. Rev. 913 (2016).

ALR. — Pursuit of nonjudicial remedy for employment discrimination as amounting to election against judicial remedy. [103 A.L.R.5th 557](#).

§ 67-5907A. Compliance with the Idaho tort claims act. — Compliance with section 67-5907(1), Idaho Code, satisfies the notice requirements of sections 6-905 and 6-906, Idaho Code, as to the allegations of the administrative complaint arising under chapter 59, title 67, Idaho Code.

History.

I.C., § 67-5907A, as added by 1998, ch. 155, § 2, p. 528.

§ 67-5908. Procedure in district court. — (1) Any action filed by the commission shall be heard by the district court unless either party shall move for a jury trial. Except as otherwise provided herein, the court shall hear the case and grant relief as in other civil actions. Any such action shall be brought in the name of the commission for the use of the person alleging discrimination or a described class, and the commission shall furnish counsel for the prosecution thereof. Any person aggrieved by the alleged discrimination may intervene in such an action.

(2) A complaint must be filed with the commission as a condition precedent to litigation. A complainant may file a civil action in district court within ninety (90) days of issuance of the notice of administrative dismissal pursuant to [section 67-5907\(6\), Idaho Code](#).

(3) In a civil action filed by the commission or filed directly by the person alleging unlawful discrimination, if the court finds that unlawful discrimination has occurred, its judgment shall specify an appropriate remedy or remedies therefor. Such remedies may include, but are not limited to:

- (a) An order to cease and desist from the unlawful practice specified in the order;
- (b) An order to employ, reinstate, promote or grant other employment benefits to a victim of unlawful employment discrimination;
- (c) An order for actual damages including lost wages and benefits, provided that such back pay liability shall not accrue from a date more than two (2) years prior to the filing of the complaint with the commission or the district court, whichever occurs first;
- (d) An order to accept or reinstate such a person in a union;
- (e) An order for punitive damages, not to exceed one thousand dollars (\$1,000) for each willful violation of this chapter.

(4) Any civil action filed by the commission under this section shall commence not more than one (1) year after a complaint of discrimination under oath is filed with the commission.

(5) In any civil action under this chapter, the burden of proof shall be on the person seeking relief.

History.

I.C., § 67-5908, as added by 1980, ch. 97, § 3, p. 214; am. 1998, ch. 155, § 3, p. 528.

STATUTORY NOTES

Prior Laws.

Former § 67-5908, which comprised S.L. 1969, ch. 459, § 8, p. 1277, was repealed by S.L. 1976, ch. 342, § 6.

CASE NOTES

Applicability.

Attorney fees.

Damages.

Exclusion of evidence.

Exhaustion.

Overall hostile work environment.

Supporting affidavit.

Timeliness.

Willfulness.

Applicability.

All of supervisor's egregious conduct could have constituted only one "prohibited act" and, as such, only one willful violation for which a maximum award of \$1,000 could have been assessed. *Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996).

If employee was pursuing a claim under this chapter against the city, then she was required to file a complaint with the Idaho human rights commission, as the procedural requirement was enacted before she filed suit. *Bryant v. City of Blackfoot*, 137 Idaho 307, 48 P.3d 636 (2002).

Attorney Fees.

Because this chapter does not make express allowance for an award of attorney fees, the legislature did not intend that such an award would be available. *Stout v. Key Training Corp.*, 144 Idaho 195, 158 P.3d 971 (2007).

Damages.

Both back pay and front pay are subsets of the global term, “lost wages.” The words “lost wages” do not differentiate between wages lost before or after trial. This is illustrated by the fact that lost wages are to be awarded as an element of “actual damages,” which are commonly understood as those actual losses caused by the conduct at issue. In other words, the purpose of the lost wages element of damages is to restore to the plaintiff all of the benefits lost as a result of the violation of this chapter. *O’Dell v. Basabe*, 119 Idaho 796, 810 P.2d 1082 (1991).

Front pay (compensation for future lost wages) is a permissible element of damages under this chapter. *O’Dell v. Basabe*, 119 Idaho 796, 810 P.2d 1082 (1991).

Future lost wages as damages are not too speculative so as to deny recovery. Using the proper guidelines, future lost wages are an integral part of an ex-employee’s damages for retaliatory discharge, and it was error for the trial court to grant a new trial as to liability based upon its determination that future lost wages were not available as an element of contract damages. *O’Dell v. Basabe*, 119 Idaho 796, 810 P.2d 1082 (1991).

The amount of future lost wages or front pay to be awarded is a matter to be determined by the trier of fact upon review of the evidence in the record. Relevant considerations include the plaintiff’s salary history, scheduled or mandated pay raises, and a finding based on the evidence in the record as to the time which it will take the plaintiff to find comparable employment with a commensurate salary, at which time the award of front pay should be discontinued. *O’Dell v. Basabe*, 119 Idaho 796, 810 P.2d 1082 (1991).

The words “such back pay” are included in subdivision (3)(c) of this section only as a limitation of the amount of back pay that may be awarded when compensating a plaintiff for lost wages. It does not limit the entire award of lost wages to back pay alone. *O’Dell v. Basabe*, 119 Idaho 796, 810 P.2d 1082 (1991).

Exclusion of Evidence.

Trial court did not abuse its discretion in ruling that the Idaho human rights commission determination and testimony from the director were special investigations within subdivision (8)(D) of Idaho Evid. R. 803 and, thus, excludable from evidence. *Jeremiah v. Yanke Mach. Shop, Inc.*, 131 Idaho 242, 953 P.2d 992 (1998).

Exhaustion.

Idaho requires the filing of a complaint with the Idaho human rights commission as a condition precedent to litigation, and a plaintiff's failure to file an IHRC complaint warrants dismissal of those claims. Filing a charge with the federal EEOC does not satisfy this condition precedent. *Collier v. Turner Indus. Group, L.L.C.*, 797 F. Supp. 2d 1029 (D. Idaho 2011).

Overall Hostile Work Environment.

The creation of an overall hostile work environment is a prohibited act, not the individual incidents which comprise the hostile work environment cause of action; as such, each comment or incident cannot amount to an individual violation. *Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996).

Supporting Affidavit.

Trial court erred by not considering an employee's affidavit filed in support of her motion for reconsideration of the court's grant of summary judgment to her employer, since the affidavit created issues of material fact as to retaliation and hostile work environment and it did not create sham issues of fact; the employee's deposition testimony did not conflict with the statements made in the affidavit. *Frazier v. J.R. Simplot Co.*, 136 Idaho 100, 29 P.3d 936 (2001).

Timeliness.

Plaintiff's complaint alleging claims under this chapter could not be saved from dismissal on statutory time limitation grounds on the basis of a continuing violations theory, because the acts plaintiff complained of — being placed on administrative leave, being forced to undergo physical or psychiatric examinations, being threatened with termination, being forced to obtain a "return to work" authorization, and being placed on a performance improvement plan — were all identifiable, separate, and

discrete acts. *Mallard v. Battelle Energy Alliance, LLC*, 2013 U.S. Dist. LEXIS 80506 (D. Idaho June 6, 2013).

Willfulness.

Despite appellant's contention to the contrary, upon finding that appellants had violated this chapter, jury instructions did direct the jury to make a separate inquiry into willfulness once it had found in favor of employee. *Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996).

Where jury heard employee's testimony regarding a minimum of 275 separate incidents of egregious conduct allegedly committed by employee's supervisor, by its verdict, jury found employee's testimony credible and found that supervisor and state acted intentionally or recklessly on ninety-eight occasions; as such, evidence was sufficient to support jury's finding of willfulness. *Paterson v. State*, 128 Idaho 494, 915 P.2d 724 (1996).

Cited *James v. KID Broadcasting Corp.*, 559 F. Supp. 1153 (D. Idaho 1983); *Fischer v. Sears, Roebuck & Co.*, 107 Idaho 197, 687 P.2d 587 (Ct. App. 1984); *Selkirk Seed Co. v. Forney*, 134 Idaho 98, 996 P.2d 798 (2000).

RESEARCH REFERENCES

ALR. — *Availability and Scope of Punitive Damages Under State Employment Discrimination Law*. 81 A.L.R.5th 367.

§ 67-5908a. Preexisting rights of action. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised 1980, ch. 97, § 5, p. 247, was repealed by S.L. 1998, ch. 155, § 4, effective July 1, 1998.

§ 67-5909. Acts prohibited. — It shall be a prohibited act to discriminate against a person because of, or on a basis of, race, color, religion, sex or national origin, in any of the following subsections. It shall be a prohibited act to discriminate against a person because of, or on the basis of, age in subsections (1), (2), (3) and (4) of this section. It shall be a prohibited act to discriminate against a person because of, or on the basis of, disability in subsections (1), (2), (3) and (4) of this section, provided that the prohibition against discrimination because of disability shall not apply if the particular disability, even with a reasonable accommodation, prevents the performance of the work required in that job, and in subsections (6), (8), (9), (10) and (11) of this section. The prohibition to discriminate shall also apply to those individuals without disabilities who are associated with a person with a disability.

(1) For an employer to fail or refuse to hire, to discharge, or to otherwise discriminate against an individual with respect to compensation or the terms, conditions or privileges of employment or to reduce the wage of any employee in order to comply with this chapter;

(2) For an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against an individual or to classify or refer an individual for employment;

(3) For a labor organization:

(a) To exclude or to expel from membership, or to otherwise discriminate against, a member or applicant for membership,

(b) To limit, segregate or classify membership, or to fail or refuse to refer for employment an individual in any way,

1. Which would deprive an individual of employment opportunities, or

2. Which would limit employment opportunities or adversely affect the status of an employee or of an applicant for employment, or

(c) To cause or attempt to cause an employer to violate this chapter.

(4) For an employer labor organization or employment agency to print or publish or cause to be printed or published a notice or advertisement

relating to employment by the employer or membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by an employment agency, indicating a preference, limitation, specification or discrimination; but a notice or advertisement may indicate a preference limitation, specification, or discrimination when such is a bona fide occupational qualification for employment;

(5) For a person:

(a) To deny an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a place of public accommodation, or

(b) To print, circulate, post, or mail or otherwise cause to be published a statement, advertisement or sign which indicates that the full and equal enjoyment of the goods, services, facilities, privileges, advantages of a place of public accommodation will be refused, withheld from, or denied an individual or that an individual's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable.

(6) For a person who owns, leases or operates a place of public accommodation:

(a) To deny an individual on the basis of disability the full and equal enjoyment of the goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation;

(b) To impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages or accommodations of a place of public accommodation, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages or accommodations being offered;

(c) To fail to make reasonable modifications in policies, practices, or procedures when such modifications are necessary to afford such goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the entity can demonstrate that

making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages or accommodations;

(d) To fail to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden;

(e) To fail to remove architectural barriers and communication barriers that are structural in nature, in existing facilities and transportation barriers in existing vehicles used by an establishment for transporting individuals (not including barriers that can only be removed through retrofitting of vehicles), where such removal is readily achievable; or

(f) Where an entity can demonstrate that the removal of a barrier under paragraph (e) of this subsection is not readily achievable, to fail to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

(7) For an educational institution:

(a) To exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, and privileges of the institution, or

(b) To make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information, or to make or keep a record, of an applicant for admission, except as permitted by the regulations of the commission,

(c) To print or publish or cause to be printed or published a catalogue or other notice or advertisement indicating a preference, limitation, specification, discrimination of an applicant for admission, or

(d) To announce or follow a policy of denial or limitation through a quota or otherwise of educational opportunities of a group or its members.

(8) For an owner or any other person engaging in a real estate transaction, or for a real estate broker or salesman:

- (a) To refuse to engage in a real estate transaction with a person,
- (b) To discriminate against a person in the terms, conditions or privileges of a real estate transaction or in the furnishing of facilities or services in connection therewith,
- (c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person,
- (d) To refuse to negotiate a real estate transaction with a person,
- (e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his attention, or to refuse to permit him to inspect real property,
- (f) To print, circulate, post or mail or cause to be so published a statement, advertisement or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto,
- (g) To offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith, or
- (h) To refuse to permit, at the expense of a person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if the modifications may be necessary to afford such person full enjoyment of the premises. Provided, that in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior, exterior, or both, of the premises, to the condition that existed before the modification, reasonable wear and tear excepted. The provision for restoration shall be included in any lease or rental agreement.

(9) For a person to whom application is made for financial assistance in connection with a real estate transaction or for the construction, rehabilitation, repair, maintenance, or improvement of real property, or a representative of such a person:

(a) To discriminate against the applicant,

(b) To use a form of application for financial assistance or to make or keep a record or inquiry in connection with applications for financial assistance which indicates directly or indirectly, an intent to make a limitation, specification, or discrimination.

(10) To insert in a written instrument relating to real property a provision which purports to forbid or restrict the conveyance, encumbrance, occupancy or lease thereof;

(11) For a person for the purpose of inducing a real estate transaction from which he may benefit financially:

(a) To represent that a change has occurred or will or may occur in the composition of the owners or occupants in the block, neighborhood, or area in which the real property is located, or

(b) To represent that this change will or may result in the lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools in the block, neighborhood, or area in which the real property is located.

History.

1969, ch. 459, § 9, p. 1277; am. 1982, ch. 83, § 3, p. 151; am. 1988, ch. 225, § 3, p. 433; am. 1994, ch. 268, § 3, p. 825; am. 2005, ch. 278, § 4, p. 870.

CASE NOTES

[Age discrimination.](#)

[Applicability.](#)

[Breach of employment contract.](#)

[Burden of proof.](#)

Construction.

Disability discrimination.

Discrimination by educational institution.

Disparate impact.

Disparate treatment.

Job discrimination.

Measurement of skills.

Sexual harassment.

Substantial evidence.

Age Discrimination.

Age discrimination claim was properly dismissed because the employee failed to show pretext in the employer's proffered reasons for negative performance evaluations that precluded the employee from receiving an automatic pay raise; specifically, the employer claimed continued unprofessional conduct in voicing complaints. *Hatheway v. Bd. of Regents of the Univ. of Idaho*, 155 Idaho 255, 310 P.3d 315 (2013).

Employee in an age discrimination case was not constructively discharged by the employer paying more to a younger employee, receiving negative evaluations after raising that issue, and a pattern of behavior that followed a speech about older workers needing to retire. *Hatheway v. Bd. of Regents of the Univ. of Idaho*, 155 Idaho 255, 310 P.3d 315 (2013).

Applicability.

Employee resigned, claiming a hostile work environment due to an affair between her supervisor and another employee which resulted in favoritism toward the paramour and her staff. Paramour favoritism is not proscribed activity under this section, and the alleged favoritism was not directed against, nor did it result in, an unfavorable effect upon a protected person or group. *Patterson v. State Dep't of Health & Welfare*, 151 Idaho 310, 256 P.3d 718 (2011).

Breach of Employment Contract.

Although a plaintiff claiming breach of an employment contract is required to mitigate damages, mitigation does not require a party to a contract to enter into a new contract proffered as an alternative by the breaching party where there is a finding that bad faith surrounds the breach of the original contract. *O'Dell v. Basabe*, 119 Idaho 796, 810 P.2d 1082 (1991).

A plaintiff asserting wrongful discharge is not required to mitigate damages by accepting an alternative position which requires the employee to relinquish claims arising from the employer's breach. *O'Dell v. Basabe*, 119 Idaho 796, 810 P.2d 1082 (1991).

An award of attorney fees to employer for defending against employee's claims for breach of express and implied contract terms, including a claim for violation of the implied covenant of good faith, should not have included fees attributable to the defense of employee's cause of action for age discrimination; that claim, though rooted in the employment relationship, sought recovery for infringement of rights created not by contract but by statutes. *Atwood v. Western Constr. Inc.*, 129 Idaho 234, 923 P.2d 479 (Ct. App. 1996).

Burden of Proof.

A complainant may prove a prima facie unlawful discrimination case without proving an employer's intent to discriminate, thereby shifting the burden of producing evidence to the employer to give a lawful explanation for its treatment of the complainant. *Bowles v. Keating*, 100 Idaho 808, 606 P.2d 458 (1979).

Where sex discrimination in employment is alleged, a claimant has the burden of proving that she did not receive equal pay for equal work, but she is not required to show that the jobs performed were identical, rather unlawful discrimination may be shown by proving that the skill, efforts and responsibility required in the performance of the jobs are substantially equal; in that determination, it is the actual job performance in content which is significant rather than job titles, classifications or descriptions, thus it is the overall job, and not its individual segments, which must form the basis of comparison. *Hoppe v. McDonald*, 103 Idaho 33, 644 P.2d 355 (1982).

Although the former employee had made a prima facie case of discrimination under this section, the employer had articulated a legitimate, nondiscriminatory reason for discharging the employee—that the employee was not prepared to make the tough decisions necessary to turn around the company’s paper division; furthermore, the employee had not raised a genuine issue of material fact as to whether the reason articulated by the employer was pretext, as the employee did not contest that the employee’s division lost money during the employee’s tenure as head of that division, so the district court’s grant of summary judgment was affirmed. [Pottenger v. Potlatch Corp.](#), 329 F.3d 740 (9th Cir. 2003).

District court erred in granting a school district, superintendent, and principal summary judgment on an assistant principal’s retaliation claim, because there was an issue of material fact as to whether the reasons they proffered for their adverse action against the assistant was pretext for retaliation; the assistant provided sufficient evidence beyond his prima facie case, demonstrating that the claimed motives for the adverse employment action against him were not believable. [Frogley v. Meridian Joint Sch. Dist. No. 2](#), 155 Idaho 558, 314 P.3d 613 (2013).

Terminated employee offered sufficient evidence to survive summary judgment on her gender discrimination claim, where she offered direct evidence of her supervisor’s discriminatory animus and offered circumstantial evidence that she was fired for following a common, accepted practice and was replaced with a less qualified male worker. [Mayes v. WinCo Holdings, Inc.](#), 846 F.3d 1274 (9th Cir. 2017).

In an action under this section, the threshold requirement is for an employee to establish a prima facie case of discrimination under the disparate treatment theory. This requires the employee to show that: (1) he belongs to a protected class; (2) he was qualified for his position; (3) he experienced an adverse employment action, and (4) similarly situated people outside his protected class received more favorable treatment, or that other circumstances surrounding the adverse employment action give rise to an inference of discrimination. Once the employee satisfies the threshold requirement, the burden of production shifts back to the employer to articulate some legitimate nondiscriminatory reason for the employee’s rejection. If the employer meets the burden of production, the employee then must produce evidence demonstrating that the proffered reason is in

fact pretext for unlawful discrimination. An employee can establish pretext by showing either that a discriminatory reason more likely motivated the employer or that the employer's proffered explanation is unworthy of credence. Generally, an employee demonstrates pretext by showing that the employer's stated reason for the adverse employment action either (1) has no basis in fact; (2) was not the actual reason; or (3) is insufficient to explain the employer's action. *Mendez v. Univ. Health Servs. Boise State Univ.*, 163 Idaho 237, 409 P.3d 817 (2018).

Construction.

The enactment of §§ 18-7303, 44-1703 and this section by the legislature expressed a clear, unambiguous intent to prohibit discrimination in employment practices on the basis of sex and to effect this policy provided state agencies with authority to seek to enjoin discriminatory practices and aggrieved individuals with the right to seek reinstatement, restoration of wages and even damages. *Idaho Trailer Coach Ass'n v. Brown*, 95 Idaho 910, 523 P.2d 42 (1974).

Disability Discrimination.

Summary judgment in favor of employer was improper in a suit by employee for disability discrimination where employee raised a sufficient factual dispute by asserting that she could have done the work that employer required of her if they had listened to her and provided the help she requested, and by reinforcing that assertion with affidavits from a professional counselor and a consulting physician to the department of health and welfare. *Stansbury v. Blue Cross of Idaho Health Serv., Inc.*, 128 Idaho 682, 918 P.2d 266 (1996).

Former state employee with insulin-dependent diabetes was disabled because his diabetes and the treatment regimen that he had to follow substantially limited him in the major life activity of eating. *Davenport v. Idaho Dep't of Env'tl. Quality*, 469 F. Supp. 2d 861 (2006), modified on other grounds, 2007 U.S. Dist. LEXIS 21603 (D. Idaho 2007).

Where an employee was terminated after failing to renew a teaching certificate, her disability discrimination claims failed because she was not a qualified individual with a disability; the employee did not allege that the school board's legal authorization requirement was itself discriminatory,

and the school board was not required to accommodate the employee's disability. *Johnson v. Bd. of Trs.*, 666 F.3d 561 (9th Cir. 2011).

Former employee, who worked as seasonal truck driver and office worker for mining company, failed to establish that she was terminated in violation of Idaho Human Rights Code, because she did not provide evidence showing that her alleged disability was motivating factor in her termination decision. *Harris v. Treasure Canyon Calcium Co.*, 132 F. Supp. 3d 1228 (D. Idaho 2015).

Discrimination by Educational Institution.

In an action brought by state commission on human rights to enjoin school officials from enforcing regulations pertaining to standards for the length of hair for male students, complaint which alleged facts showing discrimination against male students in violation of this section was sufficient to state a claim for injunction against enforcement of the regulations. *Idaho Comm'n on Idaho Comm'n on Human Rights v. Campbell*, 95 Idaho 215, 506 P.2d 112 (1973).

Disparate Impact.

To establish a prima facie case of illegal discrimination under the "disparate impact" theory, a plaintiff need only prove that an employer's policies and practices which are neutral on their face and intent, nevertheless discriminate in effect against a particular group; thereafter, an employer must shoulder the burden to show a business necessity for the use of the policies or practices challenged. *Bowles v. Keating*, 100 Idaho 808, 606 P.2d 458 (1979).

Although the former employee's statistical evidence of the employer's reduction in force (RIF) did tend to show at least some relationship between age and termination, it did not tend to show that age motivated the RIF decisions; in any case, the employee was not terminated under the RIF, so the employee's disparate impact claim under this section was properly dismissed by the district court on the employer's summary judgment motion. *Pottenger v. Potlatch Corp.*, 329 F.3d 740 (9th Cir. 2003).

Disparate Treatment.

To establish a prima facie case of discrimination under the "disparate treatment" theory, a plaintiff must show (1) that she belongs to a protected

class, (2) that she applied and was qualified for a job for which the employer was seeking applicants, (3) that despite her qualifications, she was rejected, and (4) that following her rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. [Bowles v. Keating](#), 100 Idaho 808, 606 P.2d 458 (1979).

Former employee, who worked as seasonal truck driver and office worker for mining company, failed to establish that she was terminated due to her gender in violation of Idaho Human Rights Code because she could not demonstrate that similarly situated men were treated more favorably or that her position was filled by a man, particularly as she was not replaced, but instead, her job duties were distributed among remaining workers, and there was no direct or circumstantial evidence of discriminatory motive. [Harris v. Treasure Canyon Calcium Co.](#), 132 F. Supp. 3d 1228 (D. Idaho 2015).

Job Discrimination.

Where there is a claim of job discrimination by a member of the minority covered by this chapter, that minority member is not deprived of his or her cause of action even though a person not a part of that minority is also rejected from the same job. [Bowles v. Keating](#), 100 Idaho 808, 606 P.2d 458 (1979).

Measurement of Skills.

Decisions of hiring or promotion in upper level jobs may of necessity involve assessments of such abstractions and intangibles, as leadership, personality, ability to relate to others and supervisory ability, which are difficult, if not impossible, of realistic measurement by objective technique alone. [Bowles v. Keating](#), 100 Idaho 808, 606 P.2d 458 (1979).

Where an employer utilizes subjective and unstructured standards in the hiring process, that employer, in addition to presenting legitimate nondiscriminatory reasons for an employment decision, must produce credible evidence to show that the reasons advanced were in fact the real reasons. [Bowles v. Keating](#), 100 Idaho 808, 606 P.2d 458 (1979).

Sexual Harassment.

Trial court correctly ruled that the following evidence was irrelevant to plaintiff's quid pro quo sexual harassment case: (1) evidence of sexual

harassment not directly related to her case, (2) evidence of hostile working conditions, (3) evidence that supervisor and alleged harasser were friends, and (4) evidence regarding penalties received by other employees for dissimilar violations of work rules. *De Los Santos v. J.R. Simplot Co.*, 126 Idaho 963, 895 P.2d 564 (1995).

Where woman brought sexual harassment suit against her employer the jury was properly instructed to use a “reasonable person” standard rather than a “reasonable woman” standard in determining if the work environment was objectively hostile or abusive. *Fowler v. Kootenai County*, 128 Idaho 740, 918 P.2d 1185 (1996).

In a sexual harassment suit by woman against her employer an instruction to the jury requiring the woman to prove the harassment was “based upon sex” and a subsequent instruction that she must prove that “because of her gender, she was the object of harassment” constituted reversible error; harassers should not be able to escape liability for their conduct simply because they can show their behavior is not directed at women, but is simply in accordance with the level of conduct prevalent prior to the woman’s entry in the workplace. *Fowler v. Kootenai County*, 128 Idaho 740, 918 P.2d 1185 (1996).

Summary judgment was properly awarded to a college in a student’s action for discrimination, where the college had promulgated a sexual harassment policy aimed at preventing harassment and had acted swiftly and decisively once it was informed of an instructor’s behavior *Johnson v. N. Idaho College*, 153 Idaho 58, 278 P.3d 928 (2012).

Former employee, who worked as seasonal truck driver and office worker for mining company, failed to establish that she was subjected to sexually hostile work environment, because, even if her claim was properly raised, evidence showed that when she was harassed by male truck driver, employer permitted her to avoid contact with him by working in office. *Harris v. Treasure Canyon Calcium Co.*, 132 F. Supp. 3d 1228 (D. Idaho 2015).

Substantial Evidence.

Where the trial court made findings of fact that female employee did not perform work equivalent in nature to work being performed by male

employees in high pay grades, and the findings were supported by substantial and competent evidence, such a determination was not “clearly erroneous.” [Hoppe v. McDonald](#), 103 Idaho 33, 644 P.2d 355 (1982).

Cited [Sweitzer v. Dean](#), 118 Idaho 568, 798 P.2d 27 (1990).

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Idaho Law Review. — Way out West: A Comment Surveying Idaho State’s Legal Protection of Transgender and Gender Non-Conforming Individuals, Comment. 49 Idaho L. Rev. 587 (2013).

Idaho Employers Maneuver Through Inconsistent and Confusing Discrimination Laws While Awaiting Formal Human Rights Expansion, Pam Howland. 52 Idaho L. Rev. 913 (2016).

ALR. — Visual impairment as handicap or disability under state employment discrimination law. [77 A.L.R.5th 595](#).

When is supervisor’s or coemployee’s hostile environment sexual harassment imputable to employer under state law. [94 A.L.R.5th 1](#).

Necessity of, and what constitutes, employer’s reasonable accommodation of employee’s religious preference under state law. [107 A.L.R.5th 623](#).

[Application of State Statutes Regulating Claims of Hostile Work Environment or Sexual Harassment Based on Sexual, Romantic, or Paramour Favoritism](#). [92 A.L.R.6th 121](#).

[Discrimination on Basis of Person’s Transsexual Status as Violation of State or Local Law](#). [96 A.L.R.6th 189](#).

Retail establishment’s surveillance of or refusal to serve individuals on basis of race or ethnicity, or other alleged instances of consumer “racial profiling,” as infringement of civil rights under state law. [103 A.L.R.6th 1](#).

Action under Americans with Disabilities Act ([42 U.S.C.A. § 12101 et seq.](#)), to remedy alleged harassment or hostile work environment. [162 A.L.R. Fed. 603](#).

Liability of employer, under Title VII of Civil Rights Act of 1964 ([42 U.S.C.A. § 2000e et seq.](#)) for sexual harassment of employee by customer,

client, or patron. 163 A.L.R. Fed. 445.

What constitutes employment discrimination by public entity in violation of Americans with Disabilities Act (ADA), 42 U.S.C.A. § 12132. 164 A.L.R. Fed. 433.

What constitutes reverse sex or gender discrimination against males violative of federal constitution or statutes — nonemployment cases. 166 A.L.R. Fed. 1.

“Bona fide employee benefit plan” exception to general prohibition of Age Discrimination in Employment Act (29 U.S.C.A. § 623(f)(2)(B)) as applied to plans other than early retirement incentive plans. 184 A.L.R. Fed. 1.

Preemption of state-law wrongful discharge claim, not arising from whistleblowing, by § 301(a) of Labor-Management Act of 1947 (29 U.S.C.A. § 185(a)). 184 A.L.R. Fed. 241.

Disparate impact claims under Age Discrimination Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq. 186 A.L.R. Fed. 1.

Discrimination on Basis of Person’s Transgender or Transsexual Status as Violation of Federal Law. 84 A.L.R. Fed. 2d 1.

Who is “Supervisor” for Purposes of Racial Harassment Claim Under Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e et seq.) Imputing Liability to Employer. 92 A.L.R. Fed. 2d 91.

What is Reasonable Accommodation of Deaf or Hearing-Impaired Employee for Purposes of Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. 2 A.L.R. Fed. 3d 1.

Validity, Construction, and Application of Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-1(a), 2000e-2(e)(2)) Exempting Activities of Religious Organizations from Operation of Title VII Equal Employment Opportunity Provisions. 6 A.L.R. Fed. 3d 6.

Construction and Application of Four-Fifths Rule for Finding Evidence of Adverse Impact in Federal Employment Discrimination Cases. 7 A.L.R. Fed. 3d 1.

Stray Remark or Comment Involving General References Toward Female Plaintiffs in Title VII Action for Sex Discrimination. 7 A.L.R. Fed. 3d 2.

Rights of workers with disabilities at sheltered workshops or work activity centers under federal civil rights provisions. 8 A.L.R. Fed. 3d 1.

Employee's unpaid leave as reasonable accommodation under Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. 8 A.L.R. Fed. 3d 2.

Stray Remark or Comment Involving Overt Sexual References Toward Female Plaintiffs in Title VII Action for Sex Discrimination. 9 A.L.R. Fed. 3d 5.

Failure to Hire Deaf or Hearing-Impaired Job Applicant as Violation of Americans With Disabilities Act, 42 U.S.C. § 12101 et seq. 9 A.L.R. Fed. 3d 7.

Employer's Dress Policy as Religious Discrimination Under Federal Law. 12 A.L.R. Fed. 3d 5.

National Security Exception to Employment Discrimination Provisions of Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(g)). 12 A.L.R. Fed. 3d 9.

Employer's Grooming Policy as Religious Discrimination under Federal Law. 13 A.L.R. Fed. 3d 1.

Rights of Employees with Bipolar Disorder Under Americans with Disabilities Act, Rehabilitation Act, and Family and Medical Leave Act. 17 A.L.R. Fed. 3d 5.

§ 67-5909A. Acts prohibited — Public employment — Public education. — (1) The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment or public education.

(2) The provisions of this section shall apply only to action taken after the effective date of this section.

(3) Nothing in this section shall be interpreted as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of public employment or public education.

(4) Nothing in this section shall be interpreted as invalidating any court order or consent decree that is in force as of the effective date of this section.

(5) For the purposes of this section, “state” shall include but not necessarily be limited to the state itself, any city, county, city and county, public university or community college, school district, special district, or any other political subdivision or governmental instrumentality of or within the state.

(6) The remedies available for violations of this section shall be the same, regardless of the injured party’s race, sex, color, ethnicity, or national origin, as are otherwise available for violations of this chapter; provided, however, that any remedies available for violations of this section regarding public contracts shall be determined as otherwise provided by state law.

(7) Nothing in this section shall be interpreted as prohibiting action that must be taken to establish or maintain eligibility for any federal program where ineligibility would result in a loss of federal funds to the state.

(8) If any part or parts of this section are found to be in conflict with the United States Constitution, the section shall be implemented to the maximum extent that the United States Constitution permits. Any provision held invalid shall be severable from the remaining portions of this section.

History.

I.C., § 67-5909A, as added by 2020, ch. 331, § 1, p. 963.

STATUTORY NOTES

Compiler's Notes.

The phrase “the effective date of this section” in subsections (2) and (4) refers to the effective date of S.L. 2020, Chapter 331, which was effective July 1, 2020.

§ 67-5910. Limitations. — (1) This chapter does not apply to a religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by the corporation, association, or society of its religious activities.

(2) It is not a discriminatory practice:

(a) For an employer to employ an employee, or an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization, or joint labor-management committee controlling an apprenticeship or other training or retraining program, on the basis of his religion, sex, national origin, or age if religion, sex, national origin, or age is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise, or

(b) For an employer, employment agency, or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit involuntary retirement of any individual specified in subsection (9) of this section because of the age of such individual; however, the prohibition against age discrimination contained in this chapter shall not be construed to prohibit compulsory retirement if such retirement is permitted under the terms of [29 U.S.C., section 631\(c\)\(1\)](#) and [\(2\)](#), or

(c) For a religious educational institution or an educational organization to limit employment or give preference to members of the same religion, or

(d) For an employer, employment agency, or labor organization to discriminate against a person with a disability which, under the

circumstances, poses a direct threat to the health or safety of the person with a disability or others. The burden of proving this defense is upon the employer, labor organization, or employment agency.

(3) Nothing in this chapter shall require a person who owns, leases or operates a place of public accommodation, to permit an individual with a disability to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of such place of public accommodation, where such individual poses a direct threat to the health or safety of others. The burden of proving this defense is upon the person who owns, leases or operates a place of public accommodation.

(4) This chapter does not apply to a private club, or other establishment not in fact open to the public, except to the extent that the goods, services, facilities, privileges, advantages or accommodations of the establishment are made available to the customers or patrons of another establishment that is a place of public accommodation.

(5) The provisions of [section 67-5909\(6\), Idaho Code](#), do not apply to:

- (a) Any agency of or any governmental entity within the state; or
- (b) Religious organizations or entities controlled by religious organizations, including places of worship.

(6) Notwithstanding any other provisions of this chapter, it is not a discriminatory practice for:

- (a) A religious educational institution or an educational institution operated, supervised, or controlled by a religious institution or organization to limit admission or give preference to applicants of the same religion, or
- (b) An educational institution to accept and administer an inter vivos or testamentary gift upon the terms and conditions prescribed by the donor.

(7) The provisions of [section 67-5909\(8\), Idaho Code](#), do not apply:

- (a) To the rental of a housing accommodation in a building which contains housing accommodations for not more than two (2) families living independently of each other, if the lessor or a member of his family resides in one (1) of the housing accommodations, or

(b) To the rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides therein.

(8) It is not a discriminatory practice for a religious institution or organization or a charitable or educational organization operated, supervised or controlled by a religious institution or organization to give preference to members of the same religion in a real property transaction.

(9) The prohibitions against discrimination based on age contained in this chapter shall be limited to individuals who are at least forty (40) years of age.

History.

1969, ch. 459, § 10, p. 1277; am. 1982, ch. 83, § 4, p. 151; am. 1988, ch. 28, § 1, p. 35; am. 1988, ch. 225, § 4, p. 433; am. 1994, ch. 268, § 4, p. 825; am. 2005, ch. 278, § 5, p. 870.

RESEARCH REFERENCES

Idaho Law Review. — Idaho Employers Maneuver Through Inconsistent and Confusing Discrimination Laws While Awaiting Formal Human Rights Expansion, Pam Howland. 52 Idaho L. Rev. 913 (2016).

A.L.R. — “Bona fide employee benefit plan” exception to general prohibition of Age Discrimination in Employment Act (29 U.S.C.A. § 623(f)(2)(B)) as applied to plans other than early retirement incentive plans. 184 A.L.R. Fed. 1.

Validity, Construction, and Application of Civil Rights Act of 1964 (42 U.S.C. §§ 2000e-1(a), 2000e-2(e)(2)) Exempting Activities of Religious Organizations from Operation of Title VII Equal Employment Opportunity Provisions. 6 A.L.R. Fed. 3d 6.

Construction and Application of Four-Fifths Rule for Finding Evidence of Adverse Impact in Federal Employment Discrimination Cases. 7 A.L.R. Fed. 3d 1.

Stray Remark or Comment Involving General References Toward Female Plaintiffs in Title VII Action for Sex Discrimination. 7 A.L.R. Fed. 3d 2.

Rights of workers with disabilities at sheltered workshops or work activity centers under federal civil rights provisions. 8 A.L.R. Fed. 3d 1.

Employee's unpaid leave as reasonable accommodation under Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. 8 A.L.R. Fed. 3d 2.

Stray Remark or Comment Involving Overt Sexual References Toward Female Plaintiffs in Title VII Action for Sex Discrimination. 9 A.L.R. Fed. 3d 5.

Failure to Hire Deaf or Hearing-Impaired Job Applicant as Violation of Americans With Disabilities Act, 42 U.S.C. § 12101 et seq. 9 A.L.R. Fed. 3d 7.

Employer's Dress Policy as Religious Discrimination Under Federal Law. 12 A.L.R. Fed. 3d 5.

National Security Exception to Employment Discrimination Provisions of Title VII of Civil Rights Act of 1964 (42 U.S.C. § 2000e-2(g)). 12 A.L.R. Fed. 3d 9.

Employer's Grooming Policy as Religious Discrimination under Federal Law. 13 A.L.R. Fed. 3d 1.

Rights of Employees with Bipolar Disorder Under Americans with Disabilities Act, Rehabilitation Act, and Family and Medical Leave Act. 17 A.L.R. Fed. 3d 5.

§ 67-5911. Reprisals for opposing unlawful practices. — It shall be unlawful for a person or any business entity subject to regulation by this chapter to discriminate against any individual because he or she has opposed any practice made unlawful by this chapter or because such individual has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

History.

I.C., § 67-5911, as added by 1982, ch. 83, § 5, p. 151; am. 2005, ch. 278, § 6, p. 870.

STATUTORY NOTES

Prior Laws.

Former § 67-5911, which comprised S.L. 1969, ch. 459, § 11, p. 1277; am. 1976, ch. 342, § 4, p. 1140, was repealed by S.L. 1980, ch. 97, § 4.

CASE NOTES

Evidence.

Retaliation claim.

Evidence.

A claim under this section is commonly referred to as a retaliation cause of action. Employee who complained of paramour favoritism by a supervisor to another employee and her staff did not demonstrate that the alleged favoritism was unlawful under chapter 59, title 67, Idaho Code. Where employee fails to demonstrate a hostile work environment, she may still go to the jury with her retaliation claim, if she reasonably believed that she was engaged in protected activity. *Patterson v. State Dep't of Health & Welfare*, 151 Idaho 310, 256 P.3d 718 (2011).

District court erred in granting a school district, superintendent, and principal summary judgment on an assistant principal's retaliation claim, because there was an issue of material fact as to whether the reasons they

proffered for their adverse action against the assistant was pretext for retaliation; the assistant provided sufficient evidence beyond his prima facie case, demonstrating that the claimed motives for the adverse employment action against him were not believable. [Frogley v. Meridian Joint Sch. Dist. No. 2](#), 155 Idaho 558, 314 P.3d 613 (2013).

Retaliation Claim.

Retaliation claim was not established, where the majority of the alleged adverse employment actions occurred before the employee engaged in any protected activity and the remaining actions — isolation and removal of employment duties — were not adverse for the purposes of the retaliation claim. [Hatheway v. Bd. of Regents of the Univ. of Idaho](#), 155 Idaho 255, 310 P.3d 315 (2013).

A claim under this section is commonly known as a retaliation claim. A prima facie retaliation claim requires a plaintiff to demonstrate that (1) he engaged in protected activity; (2) suffered an adverse employment action; and (3) there is a causal link between the two. [Mendez v. Univ. Health Servs. Boise State Univ.](#), 163 Idaho 237, 409 P.3d 817 (2018).

Cited [O'Dell v. J.R. Simplot Co.](#), 112 Idaho 870, 736 P.2d 1324 (1987).

RESEARCH REFERENCES

Idaho Law Review. — Idaho Employers Maneuver Through Inconsistent and Confusing Discrimination Laws While Awaiting Formal Human Rights Expansion, Pam Howland. 52 Idaho L. Rev. 913 (2016).

ALR. — Individual liability of supervisors, managers, officers or co-employees for discriminatory actions under state [Civil Rights Act](#). 83 A.L.R.5th 1.

§ 67-5912. Persons immune from civil personal liability for acts performed in connection with carrying out provisions of this act. —

The members of the commission, the attorney general and any personnel they employ or state employees they utilize shall be immune from civil personal liability for any act performed or omitted in the course of carrying out the provisions of this act.

History.

1969, ch. 459, § 12, p. 1277; am. 1976, ch. 342, § 5, p. 1140.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Compiler's Notes.

The term “this act” in the section heading and at the end of the section refers to S.L. 1969, Chapter 459, which is compiled as §§ 67-5901 to 67-5906, 67-5909, 67-5910, and 67-5912.

Section 13 of S. L. 1969, ch. 459, read: “If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.”

Chapter 60

IDAHO WOMEN'S COMMISSION

Sec.

67-6001. Establishment and purpose of the commission.

67-6002. Members — Appointment — Vacancies — Officers.

67-6003. Members — Expenses allowed.

67-6004. Power to accept federal funds — Gifts.

67-6005. State departments and agencies to cooperate.

67-6006. Report and recommendations.

67-6007. Director — Appointment and term.

§ 67-6001. Establishment and purpose of the commission. — There is hereby established in the office of the governor the Idaho women's commission. The purposes of the commission shall be: (1) to encourage and stimulate women to increase their participation in and contributions, whether paid or unpaid, to the social, political and economic progress of the local communities, the state and the nation, acting independently or in cooperation with similar commissions and committees established by the president of the United States and the governors of other states; and (2) to engage in activities that encourage and stimulate the development of strong families.

History.

1970, ch. 69, § 1, p. 165; am. 1974, ch. 22, § 48, p. 592; am. 1997, ch. 79, § 1, p. 163.

STATUTORY NOTES

Cross References.

Commission on human rights, § 67-5901 et seq.

Joint action by public agencies, §§ 67-2326 to 67-2333.

Effective Dates.

Section 61 of S.L. 1974, ch. 22 provided that the act would be in full force and effect on and after July 1, 1974.

§ 67-6002. Members — Appointment — Vacancies — Officers. —

The commission shall consist of not more than thirty-five (35) members to be appointed by the governor. Appointments shall be for terms of three (3) years. A vacancy in an unfulfilled term of office shall be filled in the same manner as the original appointment and for the balance of the unexpired term. Consideration should be given to representing the racial, ethnic and gender diversity of the state on the commission. The governor shall designate a chairman and a vice-chairman from the members of the commission. The chairman shall be the chief executive officer of the commission. The commission may appoint such other officers from its membership as it deems necessary.

History.

1970, ch. 69, § 2, p. 165; am. 1997, ch. 79, § 2, p. 163.

§ 67-6003. Members — Expenses allowed. — The members of the commission shall be compensated as provided by section 59-509(b), Idaho Code.

History.

1970, ch. 69, § 3, p. 165; am. 1980, ch. 247, § 92, p. 582.

STATUTORY NOTES

Cross References.

Standard travel pay and allowance act, §§ 67-2007, 67-2008.

§ 67-6004. Power to accept federal funds — Gifts. — The commission may accept federal funds granted by congress or executive order for all or any of the purposes of this act as well as gifts and donations from individuals and private organizations or foundations.

History.

1970, ch. 69, § 4, p. 165.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1970, Chapter 69, which is compiled as §§ 67-6001 to 67-6006.

§ 67-6005. State departments and agencies to cooperate. — The commission shall have the full cooperation of all executive departments and agencies of the state in obtaining information and performing its duties.

History.

1970, ch. 69, § 5, p. 165.

§ 67-6006. Report and recommendations. — On or before the first day of November of each year next preceding the first session of each legislature the commission shall submit a report to the governor, including recommendations based upon its studies.

History.

1970, ch. 69, § 6, p. 165.

STATUTORY NOTES

Compiler's Notes.

Section 7 of S.L. 1970, ch. 69 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 8 of S.L. 1970, ch. 69 declared an emergency. Approved February 28, 1970.

§ 67-6007. Director — Appointment and term. — An administrator of the commission, to be known as the director of the Idaho women's commission, shall be appointed by the governor after considering recommendations from the commission, and shall be subject to removal by the governor. Compensation shall be fixed by the governor within the limits of appropriations to the commission.

History.

I.C., § 67-6007, as added by 1997, ch. 79, § 3, p. 163.

Chapter 61
STATE EMPLOYEE INCENTIVE AWARDS

Sec.

67-6101 — 67-6108. [Repealed.]

§ 67-6101 — 67-6108. Legislative intent — Awards committee — Meetings — Rules and regulations — Awards participation — Funding — Exemption. [Repealed.]

STATUTORY NOTES

Prior Laws.

Former §§ 67-6101 to 67-6108, which comprised S.L. 1971, ch. 75, §§ 1-8, p. 170, were repealed by S.L. 1974, ch. 22, § 1.

Compiler's Notes.

The following sections were repealed by S.L. 1998, ch. 192, § 1, effective July 1, 1998.

§ 67-6101: **I.C., § 67-6101**, as added by 1976, ch. 2, § 1, p. 9.

§ 67-6102: **I.C., § 67-6102**, as added by 1976, ch. 2, § 1, p. 9; am. 1993, ch. 327, § 35, p. 1186; am. 1996, ch. 159, § 25, p. 502.

§ 67-6103: **I.C., § 67-6103**, as added by 1976, ch. 2, § 1, p. 9.

§ 67-6104: **I.C., § 67-6104**, as added by 1976, ch. 2, § 1, p. 9.

§ 67-6105: **I.C., § 67-6105**, as added by 1976, ch. 2, § 1, p. 9.

§ 67-6106: **I.C., § 67-6106**, as added by 1976, ch. 2, § 1, p. 9.

§ 67-6107: **I.C., § 67-6107**, as added by 1976, ch. 2, § 1, p. 9.

Chapter 62

IDAHO HOUSING AND FINANCE ASSOCIATION

Sec.

67-6201. Purpose.

67-6202. Idaho housing and finance association created.

67-6203. Commissioners — Chairman — Appointments.

67-6204. Vice-chairman, executive director and other personnel — Appointments — Quorum.

67-6205. Definitions.

67-6206. Powers of association.

67-6207. Management and operation of housing projects — Priority of applications — Limited profit sponsors.

67-6207A. Additional powers.

67-6207B. Mortgage loans — Rules — Purchase.

67-6207C. Housing sponsorship.

67-6207D. Periodic examination of income of persons residing in housing projects.

67-6208. Tax exempt status.

67-6209. Housing projects subjected to ordinances and regulations.

67-6210. Power to issue bonds.

67-6211. Additional definitions and capital reserve fund procedures.

67-6212. Refunding of obligations.

67-6213. Deposit of funds.

67-6214. Rights of bondholder.

67-6215. Rights not to be impaired by state.

67-6215A. Remedies of bondholders.

67-6215B. Legal investments.

67-6216. Authority to make loans.

67-6217. Disbursement of moneys. [Repealed.]

67-6218. Feasibility.

67-6219. Technical assistance.

67-6220. Audits — Annual reports.

67-6221. Conflict of interest.

67-6222. Exemption of real property of association from levy and sale by execution.

67-6223. Borrowing power — Financial assistance — Cooperation with state and federal government.

67-6223A. Donations to housing and finance association.

67-6224. Construction of act.

67-6224A. Legislative construction.

67-6225. Constitutionality.

67-6226. Non-agency status.

§ 67-6201. Purpose. — It is hereby declared:

(a) That within the state there is a shortage of safe or sanitary dwelling accommodations available which persons of low incomes can afford and that such persons are forced to occupy overcrowded and congested dwelling accommodations; that the aforesaid conditions cause an increase in and spread of disease and crime, and constitute a menace to the health, safety, morals and welfare of the residents of the state and impair economic values; that these conditions necessitate excessive and disproportionate expenditures of public funds for crime prevention and punishment, public health and safety, fire and accident protection, and other public services and facilities.

(b) That private enterprise has not been able to provide, without assistance, an adequate supply of safe and sanitary dwellings at prices or rents which persons and families of low income can afford, or to achieve rehabilitation of much of the present low-income housing. It is imperative that the supply of housing for persons and families of low income be increased and that coordination and cooperation among private enterprise, state and local government be encouraged to sponsor, build and rehabilitate residential housing for such persons and families.

(c) That the clearance, replanning and reconstruction of the areas in which unsanitary or unsafe housing conditions exist, and the providing of safe and sanitary dwelling accommodations for persons of low incomes (which dwelling accommodations need not be solely for persons of low incomes in order to avoid concentrations of such persons in specific localities), are public uses, and uses and purposes for which public money may be spent and private property acquired, and are governmental functions.

(d) It is also declared and the legislature hereby finds that charitable, educational, human service, cultural and other purposes pursued by nonprofit corporations are important public functions and public purposes that should be encouraged and that financing of nonprofit facilities for these purposes should be encouraged, without using state funds or lending the credit of the state, through the issuance of nonrecourse revenue bonds and

the lending of the proceeds thereof to nonprofit corporations to promote their purposes.

(e) It is further declared that in this state:

(1) There exists an inadequate supply of funds at interest rates sufficiently low to enable persons engaged in agriculture in this state, particularly beginning farmers and ranchers, to pursue agricultural operations at present levels;

(2) That such inability to pursue agricultural operations reduces the supply of agricultural commodities available to fulfill the needs of the citizens of this state;

(3) That such inability to continue operations decreases available employment in the agricultural sector of the state and results in unemployment and its attendant problems;

(4) That such conditions prevent the acquisition of an adequate capital stock of farm and ranch equipment and machinery, therefore impairing the productivity of agricultural land;

(5) That such conditions are conducive to consolidation of acreage of agricultural land with fewer individuals living and farming and ranching on the traditional family farm and ranch;

(6) That these conditions result in a loss in population, unemployment and movement of persons from rural to urban areas accompanied by added costs to communities for creation of new public facilities and services;

(7) That there have been recurrent shortages of funds from private market sources at reasonable rates of interest;

(8) That these shortages have made the sale and purchase of agricultural land to beginning farmers and ranchers a virtual impossibility in many parts of the state;

(9) That the ordinary operations of private enterprise have not in the past corrected these conditions; and

(10) That a stable supply of adequate funds for agricultural financing is required to encourage beginning farmers and ranchers in an orderly and

sustained manner and to reduce the problems described herein.

(f) It is further declared that in this state there is an urgent need to promote higher employment; encourage the development of new jobs; maintain and supplement the capital investments in industry and commerce that currently exist in this state; encourage future employment by ensuring future capital investment; attract environmentally sound industry and commerce to the state; protect and enhance the quality of natural resources and the environment; and promote the production and conservation of energy; and that financing of economic development projects in partnership with private financial institutions and state or local economic development entities for these purposes should be encouraged, without using state funds or lending the credit of the state through the issuance of nonrecourse revenue bonds and the lending of the proceeds thereof for such purposes.

(g) It is hereby further declared that:

(1) The growth of the economy of this state has prompted new and ever-increasing uses of public highways, roads, and other transportation infrastructure, and the existing transportation infrastructure of this state cannot adequately accommodate such greatly increased uses;

(2) One of the major concerns of the citizens of this state is the ability of the state to address the long-term transportation infrastructure needs of this state that are critical to the continued growth of the state's economy and the maintenance of citizens' quality of life;

(3) Utilizing bonds or notes to finance projects for transportation infrastructure results in significant cost savings to the state, since such transportation projects can be completed at present day costs and at an accelerated pace, but such bonds and notes need to be issued promptly in order to realize these cost savings; and

(4) It is reasonable and necessary to utilize such bonds or notes for the financing of transportation projects.

(h) It is hereby further declared that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended or granted and that such activities are governmental functions and serve a public purpose in improving or otherwise benefiting the people of this state; that the necessity of enacting the provisions hereinafter set forth is in the

public interest and is hereby so declared as a matter of express legislative determination.

History.

1972, ch. 324, § 1, p. 789; am. 1974, ch. 104, § 1, p. 1210; am. 1976, ch. 283, § 1, p. 968; am. 1997, ch. 191, § 1, p. 531; am. 2000, ch. 364, § 1, p. 1203; am. 2005, ch. 378, § 7, p. 1217; am. 2007, ch. 152, § 1, p. 463.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 152, added subsection (f) and redesignated the remaining subsections accordingly.

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 6 of S.L. 2000, ch. 364, declared an emergency. Approved April 14, 2000.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

OPINIONS OF ATTORNEY GENERAL

Jurisdiction.

The Idaho housing and finance association is the only Idaho-created entity that is statutorily qualified to implement HUD's Section 8 programs throughout the state. Every city-or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

§ 67-6202. Idaho housing and finance association created. — There is hereby created an independent public body corporate and politic to be known as the Idaho housing and finance association.

History.

1972, ch. 324, § 2, p. 789; am. 1974, ch. 104, § 2, p. 1210; am. 1996, ch. 253, § 1, p. 802.

OPINIONS OF ATTORNEY GENERAL

Jurisdiction.

The Idaho housing and finance association is the only Idaho-created entity that is statutorily qualified to implement HUD's Section 8 programs throughout the state. Every city-or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

§ 67-6203. Commissioners — Chairman — Appointments. — The governor shall appoint seven (7) persons to be commissioners of the Idaho housing and finance association. Preference shall be given to persons representing persons of low income and to persons with experience in the fields of mortgage lending, finance, banking, real estate, or home building. The governor shall appoint a chairman from among the seven (7) commissioners. The commissioners shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term, and provided that the terms of the first seven (7) commissioners appointed shall end on July 1, 1976, and that the terms of three (3) commissioners next appointed shall end on July 1, 1978, and that the terms of the remaining four (4) commissioners so next appointed shall end on July 1, 1980. A commissioner shall hold office until his successor has been appointed and qualifies. A certificate of the appointment or reappointment of any commissioner shall be filed in the office of the secretary of state and in the office of the association, and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner. The governor, the state treasurer, the state controller and the administrator of the division of financial management shall serve as advisors to the commissioners of the association.

In addition, two (2) members of the Idaho senate, one (1) from the majority party and one (1) from the minority party, and two (2) members of the Idaho house of representatives, one (1) from the majority party and one (1) from the minority party, shall be appointed by the legislative council to serve as advisors to the commissioners of the association. Such appointments shall be for a term of two (2) years beginning on January 1 of each odd-numbered year, and no appointee shall serve more than two (2) terms. Actual and necessary expenses and per diem shall be allowed as provided for members of the legislative council, and shall be paid from legislative funds. The legislative council shall appoint advisory members as provided herein for terms beginning on July 1, 1980, and expiring January 1, 1981, which terms shall not be included in the prohibition against more than two (2) terms.

History.

1972, ch. 324, § 3, p. 789; am. 1974, ch. 22, § 43, p. 592; am. 1974, ch. 104, § 3, p. 1210; am. 1980, ch. 377, § 1, p. 960; am. 1983, ch. 48, § 1, p. 119; am. 1989, ch. 423, § 1, p. 1034; am. 1994, ch. 180, § 227, p. 715; am. 1996, ch. 253, § 2, p. 802.

STATUTORY NOTES

Cross References.

Administrator of division of financial management, § 67-1910.

Legislative council, § 67-427.

Secretary of state, § 67-901 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 181, § 227 was effective January 2, 1995.

§ 67-6204. Vice-chairman, executive director and other personnel — Appointments — Quorum. — As soon as possible after their appointment, the commissioners shall organize for the transaction of business by choosing a vice-chairman and by adopting bylaws and rules suitable to the purpose of organizing the association and conducting the business thereof. The powers of the association shall be vested in the commissioners thereof. A majority of the commissioners of the association then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the association, and the affirmative vote of a majority of the commissioners present at any meeting, at which there is a quorum present, shall be necessary for any action taken by the association. The commissioners may hold any of their meetings by telephone or video facilities. No vacancy in the membership of the association shall impair the right of a quorum to exercise all the rights and perform all the duties of the association. The commissioners shall appoint an executive director, who shall serve at the pleasure of the association, and such other officers and employees as they may require for the performance of their duties and shall prescribe the duties and compensation of each officer and employee.

History.

1972, ch. 324, § 4, p. 789; am. 1974, ch. 104, § 4, p. 1210; am. 1989, ch. 423, § 2, p. 1034; am. 1996, ch. 253, § 3, p. 802.

§ 67-6205. Definitions. — The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

(a) “Association” or “housing association” shall mean the Idaho housing and finance association created by [section 67-6202, Idaho Code](#).

(b) “Housing project” shall mean any work or undertaking:

(1) To demolish, clear or remove buildings from any slum area; such work or undertaking may embrace the adoption of such area to public purposes, including parks or other recreational or community purposes; or

(2) To construct, sell, lease, finance, improve, operate or otherwise provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for persons of low income; such work or undertaking may include buildings, land, equipment, facilities and other real or personal property which are necessary, convenient or desirable appurtenances, such as, but not limited to, streets, sewers, water service, parks, site preparation, gardening, administrative, community, health, recreational, and welfare or other purposes; or

(3) To accomplish a combination of the foregoing. The term “housing project” also may be applied to the planning of the buildings and improvements, for either single or multi-family housing, the acquisition of property, the demolition of existing structures, the construction, reconstruction, rehabilitation, alteration and repair of the buildings and improvements and all other work in connection therewith.

(c) “Governing body” shall mean the city council, board of commissioners, board of trustees or other body having charge of the locality in which the association desires to undertake a housing project.

(d) “Federal government” shall include the United States of America, or any other agency or instrumentality, corporate or otherwise, of the United States of America.

(e) “City” shall mean any city in the state of Idaho, including each city having a special charter.

(f) “County” or “counties” shall include all counties in the state of Idaho as designated in chapter 1, title 31, Idaho Code.

(g) “Clerk” shall mean the clerk of the city or county as the case may be or the officer charged with the duties customarily imposed on such clerk.

(h) “Area of operation” shall mean the state of Idaho.

(i) “Slum” shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities or any combination of these factors, are detrimental to safety, health or morals.

(j) “Person of low income” means persons deemed by the association, including those defined as “elderly” in the United States Housing Act of 1937[, 42 U.S.C., section 1437 et seq., as amended, to require assistance available under this act on account of insufficient personal or family income, to pay the rents or carrying charges required by the unaided operation of private enterprise in providing an adequate supply of decent, safe and sanitary housing and in making such determination the association shall take into consideration, without limitation, such factors as:

(1) The amount of the total income of such persons available for housing needs;

(2) The size of the family;

(3) The cost and condition of housing facilities available;

(4) Standards established for various federal programs determining eligibility based on income of such persons; and

(5) The ability of such persons to compete successfully in the normal housing market and to pay the amounts at which private enterprise is providing decent, safe and sanitary housing.

(k) “Bonds,” “notes” or “bond anticipation notes,” and “obligations” shall mean any bonds, notes, interim certificates, debentures or other evidences of financial indebtedness issued by the association pursuant to this chapter.

(l) “Real property” shall include all lands, including improvements and fixtures thereon, and property of any nature, appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(m) “Housing authority” or “authority” means a housing authority established pursuant to the “housing authorities and cooperation law” constituting chapter 19, title 50, Idaho Code.

(n) “Rent” shall mean the periodic payment made by a person of low income in a housing project whether such money is being used as rent, or for the development of equity by such person.

(o) “Interim financing” means a short-term construction loan for planning and/or development of residential housing for persons of low income and other persons which loan shall run until financing can be assumed through other federal, state or private financing.

(p) “Housing sponsor” means individuals, joint ventures, partnerships, limited partnerships, public bodies, trusts, firms, associations, or other legal entities or any combination thereof, and corporations, cooperatives, and condominiums, approved by the association as qualified either to own, construct, acquire, rehabilitate, operate, manage or maintain a housing project, subject to the regulatory powers of the association and other terms and conditions set forth in this chapter. A “housing sponsor” shall be either a “limited profit” sponsor or a “nonprofit” sponsor.

(q) “Mortgage lender” means any bank or trust company, savings bank, mortgage company, mortgage banker, credit union, national banking association, savings and loan association, building and loan association, life insurance company, and any other financial institution authorized to transact business in the state.

(r) “Mortgage loan” means an interest-bearing obligation secured by a deed of trust, a mortgage, bond, note, or other instrument which is a lien on property in the state except in the case of loans insured by the federal housing administration or the association and which are made for the rehabilitation or improvement of existing dwellings; in such case the loans

need not be secured by an instrument constituting a lien on property in the state.

(s) “Mixed income housing project” means a housing project which contains dwellings occupied or to be occupied by persons of low income constituting at least twenty percent (20%) of such occupancy.

(t) “Facilities” means land, rights in land, buildings, structures, equipment, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and portions of any of the foregoing and similar ancillary facilities.

(u) “Nonprofit corporation” means a nonprofit corporation organized and operating in accordance with Idaho law or a nonprofit corporation organized and operating in accordance with comparable laws within another state or territory of the United States.

(v) “Nonprofit facilities” means facilities owned or used by a nonprofit corporation for a nonprofit purpose of the corporation; provided that facilities for health facilities which may be funded pursuant to chapter 14, title 39, Idaho Code, shall not be included in this definition, except for such health facilities as may be specifically approved by the Idaho health facilities authority. Facilities owned or used, consistent with its nonprofit purpose, by a nonprofit corporation recognized by a state institution of higher education as its college or university foundation shall be considered nonprofit facilities under this chapter.

(w) “Project costs of a nonprofit facility” means costs of:

(1) Acquisition, construction and improvement of any facilities included in a nonprofit facility;

(2) Architectural, engineering, consulting, accounting and legal costs related directly to the development, financing and construction of a nonprofit facility, including costs of studies assessing the feasibility of a nonprofit facility;

(3) Finance costs, including discounts, if any, the costs of issuing bonds, and costs incurred in carrying out any provisions thereof;

(4) Interest during construction and during the six (6) months after estimated completion of construction, and capitalized debt service or

repair and replacement or other appropriate reserves;

(5) The refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and

(6) Other costs incidental to any of the costs listed in this section.

(x) “Agricultural facility or facilities” means land, any building or other improvement thereon or thereto, to be owned by a beginning farmer or rancher and any personal properties deemed necessary or suitable for use, whether or not now in existence in farming or ranching, the production of agricultural commodities, including, without limitation, the products of aquaculture, hydroponics and silviculture, or the treating, processing or storing of such agricultural commodities when such activities are customarily engaged in by beginning farmers or ranchers as a part of farming or ranching.

(y) “Municipality” means any county, municipal corporation, highway district, taxing district or other political subdivision of this state.

(z) “State” means the state of Idaho.

(aa) “State body” means any department, board, commission or agency of the state of Idaho.

(bb) “Transportation board” means the Idaho transportation board and its successors.

(cc) “Transportation department” means the Idaho transportation department and its successors.

(dd) “Transportation project” means any transportation infrastructure project including, without limitation, a road, street, parkway, right-of-way, bridge, railroad crossing, drainage structure, sign, guardrail, structure, interstate, surface, resurface, shoulder, roadside, or any other work, and any planning development, management and construction related thereto, all as approved or recommended to the association by the transportation board.

(ee) “Economic development project or projects” means any commercial or industrial project including, without limitation, any manufacturing, processing, production, assembly, warehousing, solid waste disposal, recreation, office, research and development, energy or other business project owned by one (1) or more persons or other legal entities, any costs

relating thereto including, without limitation, costs for buildings, land, equipment, furnishings, interest, costs of operation, financing, architectural, engineering and other professional costs and other related costs, as well as any working capital costs or expenses for such businesses.

(ff) “Department of labor” means the Idaho department of labor and its successors.

(gg) “Department of labor project” means any project to assist the department of labor in providing or financing unemployment compensation benefits all as approved or recommended to the association by the director of the department of labor pursuant to [section 72-1346B, Idaho Code](#).

History.

1972, ch. 324, § 5, p. 789; am. 1974, ch. 104, § 5, p. 1840; am. 1976, ch. 283, § 2, p. 968; am. 1977, ch. 326, § 1, p. 914; am. 1996, ch. 253, § 4, p. 802; am. 1997, ch. 191, § 2, p. 531; am. 2000, ch. 364, § 2, p. 1203; am. 2000, ch. 365, § 1, p. 1212; am. 2005, ch. 378, § 8, p. 1217; am. 2007, ch. 152, § 2, p. 463; am. 2011, ch. 111, § 1, p. 292.

STATUTORY NOTES

Cross References.

Idaho health facilities authority, § 39-1444.

Idaho transportation board, § 40-301.

Idaho transportation department, § 40-501 et seq.

Amendments.

This section was amended by two 2000 acts which appear to be compatible and have been compiled together.

The 2000 amendment, by ch. 364, § 1, added subdivision (x) and made minor stylistic changes throughout the section.

The 2000 amendment, by ch. 365, § 1, added the last sentence in subdivision (v) and made minor stylistic changes throughout the section.

The 2007 amendment, by ch. 152, corrected the federal reference in subsection (j); and added subsection (ee).

The 2011 amendment, by ch. 111, in subsection (j), inserted “**42 U.S.C., section 1437 et seq.**” and added subsections (ff) and (gg).

Compiler’s Notes.

The term “this act” in subsection (j) refers to S.L. 1972, Chapter 324, which is compiled as §§ 67-6201 to 67-6207, 67-6209, 67-6210, 67-6214, 67-6216, 67-6218 to 67-6223, and 67-6224.

The bracketed insertion in subsection (j) was added by the compiler to supply punctuation omitted by the 2011 amendment.

For further information on the federal housing administration, referred to in subsection (r), see *[https://www.hud.gov/federal housing administration](https://www.hud.gov/federal%20housing%20administration)*.

Effective Dates.

Section 6 of S.L. 2000, ch. 364, declared an emergency. Approved April 14, 2000.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

Section 7 of S.L. 2011, ch. 111 declared an emergency. Approved March 22, 2011.

OPINIONS OF ATTORNEY GENERAL

Jurisdiction.

The Idaho housing and finance association is the only Idaho-created entity that is statutorily qualified to implement HUD’s Section 8 programs throughout the state. Every city-or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

§ 67-6206. Powers of association. — The housing and finance association is an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers which are hereby declared to be public purposes necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

(a) To sue and to be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the association; and to make and from time to time amend and repeal bylaws, rules, not inconsistent with this chapter, to carry into effect the powers and purposes of the association.

(b) To conduct its operations within any or all of the counties of the state.

(c) To cooperate with housing authorities throughout Idaho in the development of housing projects.

(d) To assign priorities for action and revise or modify said priorities from time to time.

(e) To make and execute agreements, contracts and other instruments necessary or convenient in the exercise of the powers and functions of the association under this chapter, including contracts with any housing sponsor, mortgage lender, person, firm, corporation, governmental agency, or other entity; and to include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project and to designate mortgage lenders to act for and in behalf of the association, with respect to originating or servicing and processing mortgage loans of the association, and to pay the reasonable value of service rendered to the association by such mortgage lenders pursuant to contracts with mortgage lenders.

(f) To lease, sell, construct, finance, reconstruct, restore, rehabilitate, operate or rent any housing projects, nonprofit facilities or any dwellings,

houses, accommodations, lands, buildings, structures or facilities embraced in any housing project or nonprofit facilities and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor.

(g) To own, hold and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, eminent domain or otherwise, any real or personal property or any interest therein.

(h) To acquire any real property; to sell, lease, exchange, transfer, assign, pledge or dispose of any real or personal property or any interest therein.

(i) To insure or provide for the insurance of any real or personal property or operation of the association against any risks or hazards, and to procure or agree to the procurement of insurance or guarantees from the federal government or other source for the payment or purchase of any bonds or parts thereof issued by the association, including the power to pay for any such insurance or guarantees.

(j) To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which a bank, as defined in the “bank act,” title 26, Idaho Code, may legally invest funds including without limitation, to agree to purchase the obligations of any federal, state or local government upon such conditions as the association may determine to be prudent and in its best interest.

(k) Within its area of operation: to investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of adequate, safe and sanitary dwelling accommodations for persons of low income; to make studies and recommendations relating to the problem of clearing, replanning and reconstruction of slum areas and the problem of providing dwelling accommodations for persons of low income, and to cooperate with the city, the county, the state or any political subdivision thereof in action taken in connection with such problems; and to engage in research, studies and experimentation on the subject of housing.

(l) To participate in cooperative ventures with any agencies, organizations and individuals in order to undertake the provision of housing

for persons of low income, to undertake the provision of nonprofit facilities, economic development projects or agricultural facilities.

(m) To provide research and technical assistance to eligible agencies, organizations and individuals eligible to develop low-cost housing and to research new low-cost housing development and construction methods.

(n) To make and undertake commitments to make or participate in the making of mortgage loans to persons of low income and to housing sponsors, including without limitation federally insured mortgage loans, and to make temporary loans and advances in anticipation of permanent loans to housing sponsors; said mortgage loans to housing sponsors shall be made to finance the construction, improvement, or rehabilitation of housing projects for persons of low income, and/or mixed income housing projects upon the terms and conditions set forth in this chapter; provided however, that such loans shall be made only upon the determination by the association that mortgage loans are not otherwise available, wholly or in part, from private lenders upon reasonably equivalent terms and conditions.

(o) To purchase, or make commitments to purchase or participate in the purchase of mortgage loans from mortgage lenders which loans have been made for the construction, improvement, or rehabilitation of housing projects for persons of low income and/or mixed income housing projects or loans which have been made to persons of low income for residential housing, upon terms set forth in this chapter; provided however, that any such purchase shall be made only upon the determination by the association that the mortgage loans to be made are not otherwise being made by mortgage lenders upon reasonably equivalent terms and conditions. Also, to purchase, or make commitments to purchase or participate in the purchase of mortgage loans from mortgage lenders whether or not said loans were made to persons of low income, upon terms set forth in this chapter; provided, however, that the proceeds from such purchase or the equivalent thereof shall be reinvested in obligations of the association, in mortgage loans to persons of low income or in mortgage loans for housing projects for persons of low income and/or mixed income housing projects, and provided that any such purchase shall be made only upon the determination by the association that the mortgage loans to be made are not otherwise being made by mortgage lenders upon reasonably equivalent terms and conditions.

(p) To provide interim financing for housing projects including mixed income housing projects approved by the association, provided that the association has determined that such financing is not otherwise available from mortgage lenders upon reasonably equivalent terms and conditions.

(q) To prescribe rules and policies in connection with the performance of its functions and duties.

(r) To do all other things deemed necessary and desirable to accomplish the objectives of this chapter.

(s) To borrow money and issue bonds and notes or other obligations, to invest the proceeds thereof in any lawful manner and to fund or refund the same, and to provide for the rights of the holders of its obligations as provided in this chapter and in connection therewith, to waive, by resolution or other document of the association, the exemption from federal income taxation of interest on any of the association's obligations under existing or future federal law and to establish, maintain and preserve the association's general obligation rating and any rating on its bonds, notes or other obligations.

(t) To receive and accept aid or contributions from any source.

(u) To employ architects, engineers, attorneys, accountants, housing construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation.

(v) To insure mortgage payments of any mortgage loan made for the purpose of constructing, rehabilitating, purchasing, leasing, or refinancing housing projects upon such terms and conditions as the association may prescribe.

(w) To fix and revise from time to time and charge and collect fees and charges in connection with loans made or other services provided by the association pursuant to this chapter, and to make and publish rules respecting the making and purchase of mortgage loans.

(x) To organize a nonprofit corporation to assist the association in providing for housing projects.

(y) To enter upon and inspect any housing project, including housing projects undertaken by housing sponsors, for the purpose of investigating

the physical and financial condition thereof, and its construction, rehabilitation, operation, management and maintenance, and to examine all books and records with respect to capitalization, income and other matters relating thereto.

(z) To order such alterations, changes or repairs as may be necessary to protect the security of its investment in a housing project or the health, safety, and welfare of the occupants thereof.

(aa) To make or purchase secured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project costs of any nonprofit facility, economic development project or agricultural facility, including the refunding of any outstanding obligations, mortgages or advances issued, made or given by any person for the project costs of a nonprofit facility, economic development project or agricultural facility; provided that private financial institutions shall be involved in providing such financing for economic development projects, and further, that the association will work with private financial institutions as the primary or preferred credit enhancement providers if credit enhancement is needed for such financings, and to charge and collect interest on the loans for the loan payments upon such terms and conditions, including without limitation bond rating and issuance conditions, as the board of commissioners considers advisable which are not in conflict with this chapter.

(bb) As security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, to mortgage, pledge, or otherwise encumber any or all of nonprofit facilities, economic development projects or agricultural facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the association, to secure any loan made by the association and to pledge the revenues and receipts therefrom.

(cc) To issue bonds for the purpose of financing all or part of the project cost on any nonprofit facility, economic development project or agricultural facility and to secure the payment of the bonds as provided in this chapter.

(dd) To purchase or sell by installment contract or otherwise, and convey all or any part of any nonprofit facility, economic development project or agricultural facility for such purchase price and upon such terms and

conditions as this board of commissioners considers advisable which are not in conflict with this chapter.

(ee) To lease all or any part of any nonprofit facility, economic development project or agricultural facility for such rentals and upon such terms and conditions, including options to purchase, as the board of commissioners considers advisable and not in conflict with this chapter.

(ff) To construct and maintain one (1) or more nonprofit facilities, economic development projects or agricultural facilities, provided that the association shall not operate any nonprofit facility, economic development project or agricultural facility as a business other than as lessor, seller or lender. The purchase, holding and enforcing of mortgages, deeds of trust, or other security interests and contracting for any servicing thereof is not considered the operation of a nonprofit facility, economic development project or agricultural facility as a business.

(gg) To act as the designated housing resource clearinghouse in the state for matters relating to affordable housing.

(hh) To coordinate the development and maintenance of a housing policy for the state.

(ii) To enter into agreements or other transactions with and accept grants, reimbursements or other payments and the cooperation of the United States or any agency thereof or of the state of Idaho or any agency thereof or municipality of the state in furtherance of the purposes of this act, including, but not limited to, the development, maintenance, operation and financing of any transportation project or the financing of any department of labor project and to do any and all things necessary in order to avail itself of such aid and cooperation.

(jj) To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided to finance transportation projects approved and recommended by the transportation board.

(kk) To borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided to finance department of labor projects approved and recommended by the director of the department of labor pursuant to [section 72-1346B, Idaho Code](#).

History.

1972, ch. 324, § 6, p. 789; am. 1974, ch. 104, § 6, p. 1210; am. 1976, ch. 283, § 3, p. 968; am. 1977, ch. 326, § 2, p. 914; am. 1989, ch. 423, § 3, p. 1034; am. 1996, ch. 253, § 5, p. 802; am. 1997, ch. 191, § 3, p. 531; am. 1998, ch. 374, § 1, p. 1160; am. 2000, ch. 364, § 3, p. 1203; am. 2005, ch. 378, § 9, p. 1217; am. 2007, ch. 152, § 3, p. 463; am. 2011, ch. 111, § 2, p. 292.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Duties of director of department of labor, § 72-1333.

Amendments.

The 2007 amendment, by ch. 152, throughout the section, substituted “this chapter” for “this act”; in subsection (l) and throughout subsections (aa) through (ff), inserted “economic development project”; and added the proviso near the middle of subsection (aa).

The 2011 amendment, by ch. 111, in subsection (ii), inserted “or the financing of any department of labor project” and added subsection (kk).

Compiler’s Notes.

The term “this act” in subsection (ii) refers to S.L. 2005, Chapter 378, which is codified as §§ 40-105, 40-108, 40-315, 40-702, 40-707, 40-718, 67-6201, 67-6205, 67-6206, and 67-6210.

Effective Dates.

Section 3 of S.L. 1998, ch. 374 declared an emergency. Approved March 25, 1998.

Section 6 of S.L. 2000, ch. 364, declared an emergency. Approved April 14, 2000.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

Section 7 of S.L. 2011, ch. 111 declared an emergency. Approved March 22, 2011.

§ 67-6207. Management and operation of housing projects — Priority of applications — Limited profit sponsors. — (a) It is hereby declared to be the policy of the state that the Idaho housing and finance association shall manage and operate housing projects or cause its housing projects to be managed and operated in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with providing adequate, safe and sanitary accommodations, and shall not construct or operate any such project for profit or as a source of revenue. The association shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income and receipts of the association from whatever sources derived, will be sufficient:

- (1) To pay, as the same become due, the principal and interest on the bonds of the association; and
- (2) To pay its cost of operation.

(b) In considering any application for a mortgage loan, the association shall give first priority to applications for housing projects which will be well planned and well designed; and shall also give consideration to:

- (1) The comparative need for housing for persons of low-income in the area to be served by the proposed project;
- (2) The ability of the applicant to carry out, operate, manage and maintain the proposed housing project; and
- (3) The existence of zoning or other regulations to protect adequately the proposed housing project against detrimental future uses which could cause undue depreciation in the value of the project.

(c) The association shall have authority to set from time to time the interest rates at which it shall make loans and commitments therefor. Such interest rates shall be established by the association in its sole discretion at the lowest level consistent with the association's cost of operation and its responsibilities to the holders of its bonds, notes or other obligations.

(d) A limited profit housing sponsor shall not make distributions in any one (1) year with respect to a housing project financed by the association in excess of such percentage of a housing sponsor's equity in such housing project as shall be prescribed by rules of the association, nor shall any of the principals or stockholders of such a housing sponsor at any time earn, accept, or receive a return greater than such percentage of its investment in such housing project as shall be prescribed by rules of the association. A housing sponsor's equity in a housing project shall consist of its investment in the housing project as determined by the board of commissioners of the association.

History.

1972, ch. 324, § 8, p. 789; am. 1974, ch. 104, § 7, p. 1210; am. 1989, ch. 423, § 4, p. 1034; am. 1991, ch. 239, § 1, p. 574; am. 1996, ch. 253, § 6, p. 802.

§ 67-6207A. Additional powers. — In addition to all other powers, the association also shall have the following specific powers:

(a) To make and publish rules respecting making mortgage loans pursuant to this act, the regulations of borrowers, housing sponsors, mortgage lenders, and the construction of ancillary commercial facilities.

(b) To make rules respecting the qualifications for admission to housing projects pursuant to this chapter.

(c) To invest in, purchase, sell, or to make commitments to purchase, and take assignments from lenders, of notes and mortgages or other obligations evidencing loans for housing projects, loans for nonprofit facilities, loans for economic development projects or loans for agricultural facilities, at public or private sale, with or without public bidding.

(d) To make loans to mortgage lenders under terms and conditions requiring the proceeds thereof to be used by such mortgage lenders for the making of new mortgage loans for housing projects.

(e) To enter into mortgage insurance agreements with mortgage lenders in connection with the lending of money by such institutions for housing projects.

(f) Subject to any agreement with bondholders or noteholders, to collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders and acquire or take possession of such collateral and sell the same at public or private sale, with or without public bidding, and otherwise deal with such collateral as may be necessary to protect the interest of the association therein.

History.

I.C., § 67-6207A, as added by 1974, ch. 104, § 8, p. 1210; am. 1996, ch. 253, § 7, p. 802; am. 1997, ch. 191, § 4, p. 531; am. 2000, ch. 364, § 4, p. 1203; am. 2007, ch. 152, § 4, p. 463.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 152, in subsection (b), substituted “this chapter” for “this act”; and in subsection (c), inserted “loans for economic development projects.”

Compiler’s Notes.

The term “this act” in subsection (a) refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

Effective Dates.

Section 6 of S.L. 2000, ch. 364, declared an emergency. Approved April 14, 2000.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

§ 67-6207B. Mortgage loans — Rules — Purchase. — The association shall promulgate rules governing the various programs which it has authorized to be undertaken. In promulgating such rules it shall consider the following:

(a) The association shall from time to time adopt, modify or repeal rules governing the making of loans to housing sponsors and the purchase and sale of mortgage loans from mortgage lenders and the application of the proceeds thereof, including rules as to any or all of the following:

(1) Restrictions as to the interest rates on mortgage loans or the return realized therefrom by mortgage lenders;

(2) Requirements as to disbursements and commitments by mortgage lenders with respect to mortgage loans;

(3) Rules relative to the purchase and sale of mortgage loans shall be designed to effectuate the general purposes of this act and the following specific objectives:

(i) the expansion of the supply of funds in this state available for mortgage loans for persons of low-income;

(ii) the provision of the additional housing for persons of low-income needed to remedy the shortage of adequate housing in this state and eliminate the existence of a large number of substandard dwellings;

(iii) the restriction of the financial return and benefit to that necessary to protect against the realization by mortgage lenders of an excessive financial return or benefit as determined by prevailing market conditions; and

(iv) standards as to the number of dwelling units and housing projects and other characteristics of dwelling units for persons of low-income and housing projects to be financed by mortgage loans.

(b) The ratio of loan to total housing project cost and the amortization period of loans made under this act which are insured by the federal housing administration (FHA) shall be governed by the FHA mortgage insurance commitment for each housing project; but in no event shall such

amortization period exceed fifty (50) years. In the case of a mortgage loan not insured by FHA the amount of the loan to:

(1) limited profit housing sponsors shall not exceed ninety-five percent (95%) of the total housing project cost as determined by the association, and

(2) nonprofit housing sponsors shall not exceed one hundred percent (100%) of the total housing project cost as determined by the association.

The amortization period of such loan shall be determined in accordance with rules formulated and published by the association, but in no event shall such amortization period exceed fifty (50) years.

(c) A mortgage loan made hereunder may be prepaid to maturity after such period of years and under such terms and conditions as shall be determined by the association.

(d) No mortgage loan purchased from a mortgage lender shall be eligible for purchase or commitment to purchase by the association hereunder unless at or before the time of transfer thereof to the association such mortgage lender certifies:

(1) That in its judgment the mortgage loan would in all respects be a prudent investment; and

(2) That, except for mortgage loans purchased under a preexisting commitment with the association for the origination and purchase of such loans, the proceeds of sale or its equivalent shall be reinvested in obligations of the association or in mortgage loans to provide housing for persons of low-income within this state, or, if required by the association, invested in short term obligations pending the purchase of such association obligations or the making of such mortgage loans.

(e) The association shall purchase mortgage loans at a purchase price equal to the outstanding principal balance; provided, however, that discount from the principal balance or the payment of a premium may be employed to effect a fair rate of return, as determined by the association, in its discretion, based upon the rate of interest payable by the association on its obligations issued to purchase such mortgages, its administrative expenses, and market conditions and any other relevant factors existing at the time of purchase.

(f) Each mortgage loan to a housing sponsor for a newly constructed rental housing project shall be evidenced by a mortgage or deed of trust, note or bond and by a mortgage or deed of trust which shall be a lien on the housing project and on all of the real property constituting the site of or relating to such housing project and which shall contain such terms and provisions and be in a form approved by the association.

(g) Each mortgage loan shall be subject to an agreement between the association and the housing sponsor which will subject said sponsor and its principals or stockholders to limitations established by the association as to rentals and other charges, builders' and developers' profits and fees, and the disposition of its property and on all of the real property constituting the site of or relating to such housing project.

(h) The association shall require as a condition of each loan to a mortgage lender, and (except for mortgage loans to persons of low-income or for housing projects for persons of low-income and/or for mixed income housing projects which were made by a mortgage lender pursuant to a preexisting commitment with the association to purchase such mortgage loans) as a condition of the purchase or the making of a commitment to purchase mortgage loans from a mortgage lender, that such mortgage lender shall following the receipt of the loan proceeds or sale proceeds have entered into written commitments with the association to make, and shall thereafter proceed as promptly as practicable to make and disburse from such loan proceeds, mortgage loans to persons of low-income or mortgage loans for housing projects or to purchase obligations of the association in an aggregate principal amount equal to the amount of such prior loan; and the association shall not purchase nor make commitment to purchase such mortgage loans or obligations from a mortgage lender from which it has previously purchased such mortgage loans nor make a loan to a mortgage lender to which it has previously made a loan unless said mortgage lender has either restored or made commitments to restore to its portfolio of mortgage loans in this state, mortgage loans to provide residential housing for persons of low-income from the date thereof or has added to or made commitments to add to its portfolio of association obligations in an aggregate principal amount equal to the proceeds of prior sale to said mortgage lender.

(i) To assure repayment loans from the association to mortgage lenders, the association shall require that loans made to mortgage lenders shall be secured as to payment of both principal and interest by a pledge of and lien upon collateral security, including without limitation direct obligations of, or obligations (including, without limitation, mortgages) guaranteed or insured as to payment of principal and interest by, the federal government or this state.

History.

I.C., § 67-6207B, as added by 1974, ch. 104, § 9, p. 1210; am. 1976, ch. 283, § 4, p. 968; am. 1977, ch. 326, § 3, p. 914; am. 1989, ch. 423, § 5, p. 1034; am. 1996, ch. 253, § 8, p. 802.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in paragraph (a)(3) and the introductory paragraph in subsection (b) refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

For further information on the federal housing administration, referred to in the introductory paragraph in subsection (b), see <https://www.hud.gov/federalhousingadministration>.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-6207C. Housing sponsorship. — The association shall have the power to supervise housing sponsors, including limited profit housing sponsors, and their real and personal property in the following respects:

(a) The reorganization of any housing sponsor shall be subject to the supervision and control of the association, and no such reorganization shall be had without the consent of the association.

(b) In the event of violation by a housing sponsor of any provisions of a loan, the terms of any agreement between the association and the housing sponsor, the provisions of this act, or of any rules duly promulgated pursuant to this act, the association may remove any or all of the existing directors or officers of such housing sponsor and may appoint such person or persons whom the association in its sole discretion deems advisable as new directors or officers to serve in the places of those removed, notwithstanding the provisions of any other law; provided, however, that any such directors or officers so appointed by the association shall serve only for a period coexistent with the duration of such violation or until the association is assured in a manner satisfactory to it against violations of a similar nature. Officers or directors so appointed need not be stockholders or meet other qualifications which may be prescribed by the certificate or articles of incorporation, or bylaws, or by other instruments or laws governing such housing sponsor.

(c) The association shall require the housing sponsor receiving a loan or its contractor to post labor and materials, construction performance, surety bonds or make other assurances of completion in amounts related to the housing project cost as established by the association's rules, and to execute such other assurances and guarantees as the association may deem necessary.

(d) The association shall:

- (1) prescribe uniform systems of accounts and records for housing sponsors,
- (2) require such housing sponsors to make reports,

(3) make certifications as to expenditures made by such housing sponsors, and

(4) examine all books and records with reference to capital structure, income, expenditures and other payments of a housing sponsor.

(e) The association shall supervise the operation and maintenance of any housing project.

(f) The association shall fix and may alter from time to time a schedule of rents and charges for any housing project.

(g) The association shall determine standards for, and shall control tenant selection by a housing sponsor.

(h) The association may require the housing project sponsor to demonstrate to the association that the housing project will be occupied to the maximum extent feasible by persons whose incomes fall in the lowest twenty-five percent (25%) of all persons who are eligible to occupy the housing project under the income guidelines established by the association for admission to such housing projects.

(i) The association shall prescribe rules specifying the categories of cost which shall be allowable in the construction, reconstruction, remodeling, improvement or rehabilitation of a housing project. The association shall require any housing sponsor to certify the actual housing project costs upon completion of the housing project, subject to audit and determination by the association. Notwithstanding the provisions of this subsection, the association may accept, in lieu of any certification of housing project costs as provided herein, such other assurances of the said housing project costs, in any form or manner whatsoever, as will enable the association to determine with reasonable accuracy the amount of said housing project costs.

(j) The association shall regulate the retirement of any capital investment or the redemption of stock of a limited profit housing sponsor where any such retirement or redemption when added to any dividend or other distribution will exceed in any one (1) fiscal year such percentage as shall be prescribed by rules of the association of such sponsor's investment or equity in any housing project.

(k) Notwithstanding any other provision of this chapter, the association is not empowered to finance any housing project undertaken by a housing sponsor unless, prior to the financing of any housing project hereunder, the association finds:

(1) That there exists a shortage of decent, safe, and sanitary housing at rentals or prices which persons of low-income can afford within the general housing market area to be served by the proposed housing project.

(2) That private enterprise and investment have been unable, without assistance, to provide the needed decent, safe, and sanitary housing at rentals or prices which persons of low-income can afford or to provide sufficient mortgage financing for residential housing for occupancy by such persons.

History.

I.C., § 67-6207C, as added by 1974, ch. 104, § 10, p. 1210; am. 1989, ch. 423, § 6, p. 1034; am. 1991, ch. 239, § 2, p. 574; am. 1996, ch. 253, § 9, p. 802.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in subsection (b) refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

§ 67-6207D. Periodic examination of income of persons residing in housing projects. — (a) The association shall, by rules, provide for the periodic examination of the income of any person or family residing in and renting a dwelling unit in any rental housing project, assisted by virtue of the powers granted the association under this act. In the event that the gross aggregate income of such persons or families residing in any such housing project increases and the ratio to the current rental or carrying charges of the dwelling unit becomes greater than the ratio prescribed for admission by the association for admission to the project, the owner or managing agent of such housing project shall permit such persons to continue to occupy the unit.

(b) The association or the housing sponsor (with the approval of the association) of any such rental housing project, may terminate the tenancy or interest of any such person or family residing in such housing project whose gross aggregate income exceeds amounts prescribed by rule of the association and which continues to exceed the same for a period of six (6) months or more; provided, that no tenancy or interest of any such person in any such housing project shall be terminated except upon reasonable notice and opportunity to obtain suitable alternate housing, in accordance with rules of the association; provided further, that any such person, with the approval of the association, shall be permitted to continue to occupy the unit, subject to payment of rent or carrying charges or a surcharge to the housing sponsor in accordance with a schedule of surcharges fixed by the association.

(c) Any person residing in a housing project who has acquired equity in such housing project, including equity in a housing project which is a cooperative, and is required to be removed from the housing project because of excessive income as herein provided, shall be discharged from liability on any note, bond, or other evidence of indebtedness relating thereto and shall be reimbursed, in accordance with the rules of the association, for all sums paid by such person to the housing sponsor on account of the purchase of stock or debentures as a condition of occupancy or on account of the acquisition of title for such purpose.

History.

I.C., § 67-6207D, as added by 1974, ch. 104, § 11, p. 1210; am. 1976, ch. 283, § 5, p. 968; am. 1989, ch. 423, § 7, p. 1034; am. 1996, ch. 253, § 10, p. 802.

STATUTORY NOTES**Compiler's Notes.**

The term "this act" at the end of the first sentence in subsection (a) refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-6208. Tax exempt status. — As set forth in the declaration and statement of intent herein, the association will be performing an essential governmental function in the exercise of the powers conferred upon it by this act, and the notes and bonds of the association issued pursuant to this act, and the income therefrom, including any profit made on the sale thereof, and all its fees, charges, gifts, grants, revenues, receipts and other moneys received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation of every kind by the state and by the municipalities and all other political subdivisions of the state.

The property of the association is declared to be public property used for essential public purposes and such property and the income and operations of the association shall be exempt from all taxes and special assessments of the city, the county, the state or any political subdivision or municipalities thereof; provided, however, that the association's office property shall be subject to property taxes and that in lieu of such taxes on its other property, the association shall negotiate an agreement with the city, the county, the state, as the case may be, to make payments, if any be required, to the city, county, or the state for improvements, services and facilities furnished by the said city, county or state for the benefits of a housing project, or in lieu of such taxes, the association may agree to make payments to a school district or school districts, which district or districts include within its boundaries all or a portion of the real property of the association, for school services and facilities furnished by said school district or districts, for the benefit of the residents of a housing project.

History.

I.C., § 67-6208, as added by 1974, ch. 104, § 13, p. 1210; am. 1996, ch. 253, § 11, p. 802.

STATUTORY NOTES

Cross References.

Declaration of intent of chapter, § 67-6201.

Prior Laws.

Former § 67-6208, which comprised S.L. 1972, ch. 324, § 8, p. 789 was repealed by S.L. 1974, ch. 104, § 12.

Compiler's Notes.

The term “this act” in the first paragraph refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

§ 67-6209. Housing projects subjected to ordinances and regulations.

— All housing projects of the association shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality of any housing project and the association shall take into consideration the relationship of the project to any larger plan or long-range program for the development of the area in which the housing association functions.

History.

1972, ch. 324, § 9, p. 789; am. 1996, ch. 253, § 12, p. 802.

§ 67-6210. Power to issue bonds. — The association shall have power and is hereby authorized to issue, from time to time, its negotiable notes and bonds in conformity with the applicable provisions of the uniform commercial code in such principal amount as the association shall determine to be necessary for sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the association, establishment of reserves to secure such notes and bonds, and all other expenditures of the association incidental and necessary or convenient to carry out its corporate purposes and powers; provided, however, that the association shall provide in its resolution authorizing such bonds that all revenues received by the association as a result of the issuance of such bonds shall be pledged first to the payment of principal and interest on such bonds.

(a) The association shall have the power, from time to time, to issue:

(1) notes to renew notes and

(2) bonds to pay notes, including the interest thereon, and

(3) whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes.

The refunding bonds may be:

(1) exchanged for the bonds to be refunded or

(2) sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(b) Except as may otherwise be expressly provided by the association, every issue of its notes and bonds shall be payable exclusively from the revenues or income of the association, including grants and contributions from the United States of America, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(c) The notes and bonds shall be authorized by resolution or resolutions of the association, shall bear such date or dates and shall mature at such

time or times as such resolution or resolutions may provide. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the association may be sold by the association, at public or private sale, at such price or prices as the association shall determine.

(d) Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

- (1) pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;
- (2) pledging all or any part of the assets of the association including mortgages and obligations securing the same, to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;
- (3) the use and disposition of the gross income from mortgages owned by the association and payment of principal of mortgages owned by the association;
- (4) the setting aside of reserves or sinking funds and the regulation and disposition thereof;
- (5) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;
- (6) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;
- (7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of

notes or bonds the holders of which must consent thereto; and the manner in which such consent may be given;

(8) limitations on the amount of moneys to be expended by the association for operating expenses of the association;

(9) vesting in a trustee or trustees such property, rights, powers and duties in trust as the association may determine, which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this act; and limiting or abrogating the right of the bondholders to appoint a trustee under this act, or limiting the rights, powers and duties of such trustee;

(10) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the association to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and the other provisions of this act;

(11) pledging all or any part of funds allocated to the association under Idaho law or other revenues or the proceeds of notes or bonds to secure the payment of notes or bonds issued to finance transportation projects, subject to such agreements with noteholders or bondholders as may then exist;

(12) setting forth the provisions for any contracts relating to its bonds or notes, including, without limitation, any investment or interest rate contracts, or any contract providing for a credit enhancement, including, but not limited to, letters of credit, bond insurance and surety bonds provided by private financial institutions;

(13) setting forth the provisions for representations or certifications to be made by an officer of the association with respect to funds to be allocated to the association for transportation projects and provisions for the disbursements of the proceeds of the bonds or notes for payment of the costs of a transportation project, costs of issuance and other related costs;

(14) pledging all or any part of funds allocated to the association pursuant to [section 72-1346B, Idaho Code](#), or the proceeds of notes or

bonds to secure the payment of notes or bonds issued to finance a department of labor project, subject to such agreements with noteholders or bondholders as may then exist;

(15) setting forth the provisions for representations or certifications to be made by an officer of the association with respect to funds to be allocated to the association for a department of labor project and provisions for the disbursements of the proceeds of the bonds or notes for payment of the costs of a department of labor project, costs of issuance and other related costs;

(16) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(e) Any pledge made by the association shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the association shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the association, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(f) Neither the commissioners of the association nor any other person executing such notes or bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(g) The association, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the association, which shall thereupon be canceled, at a price not exceeding:

(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or

(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

(h) In the discretion of the association, the bonds may be secured by a trust indenture by and between the association and a corporate trustee,

which may be any trust company or bank having the power of a trust company in the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the association in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. The association may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the association. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(i) Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes and bonds for registration.

(j) In case any of the commissioners or officers of the association whose signatures appear on any notes or bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery.

(k) The association shall not issue any bonds or notes to finance transportation projects unless:

(1) the Idaho transportation board has approved and recommended the transportation projects for financing through the association;

(2) the Idaho transportation board has certified to the association that sufficient funds are available to make the payments required for the bonds or notes to be issued to finance the transportation projects and that the annual, total cumulative debt service and bond-related expenses on federally-funded highway project financing do not exceed the limits

specified in [section 40-315\(3\), Idaho Code](#), or has approved a resolution required under [section 40-720\(6\), Idaho Code](#); and

(3) the association and the Idaho transportation board have entered into an agreement for the association to provide financing of the transportation projects.

(l) The association shall not issue any bonds or notes to finance a department of labor project unless:

(1) the director of the department of labor has approved and recommended the department of labor project for financing through the association pursuant to [section 72-1346B, Idaho Code](#);

(2) the director of the department of labor has certified to the association that sufficient funds are available to make the payments required for the bonds or notes to be issued to finance the department of labor project; and

(3) the association and the director of the department of labor have entered into an agreement for the association to provide financing of the department of labor project.

History.

1972, ch. 324, § 10, p. 789; am. 1974, ch. 104, § 14, p. 1210; am. 1978, ch. 288, § 1, p. 700; am. 1996, ch. 253, § 13, p. 802; am. 2005, ch. 378, § 10, p. 1217; am. 2011, ch. 111, § 3, p. 292; am. 2019, ch. 307, § 4, p. 919.

STATUTORY NOTES

Cross References.

Duties of director of department of labor, § 72-1333.

Idaho transportation board, § 40-301 et seq.

Uniform commercial code — negotiable instruments, § 28-3-101 et seq.

Amendments.

The 2011 amendment, by ch. 111, added paragraphs (d)(14) and (d)(15), and redesignated former paragraph (d)(14) as paragraph (d)(16); and added subsection (l).

The 2019 amendment, by ch. 307, added “or has approved a resolution required under [section 40-720\(6\), Idaho Code](#)” near the end of paragraph (k)(2).

Compiler’s Notes.

The term “this act” in paragraphs (d)(9) and (d)(10) refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

Section 11 of S.L. 2005, ch. 378 provided “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 7 of S.L. 2011, ch. 111 declared an emergency. Approved March 22, 2011.

§ 67-6211. Additional definitions and capital reserve fund procedures. — As used in this section, the following words and phrases shall have the following meanings unless the context shall indicate another or different meaning or intent:

(a) “Maximum capital reserve fund requirement” shall mean the amount set forth in the association’s resolution or indenture authorizing the bonds or other obligations secured by a capital reserve fund, or, if no amount is stated in such resolution or indenture, then, as of any particular date of computation, an amount of money equal to the greatest of the respective amounts, for the then current or any future fiscal year of the association, of annual debt service of the association, such annual debt service for any fiscal year being the amount of money equal to the aggregate of:

- (1) All interest payable during such fiscal year on all bonds secured by such capital reserve fund of the association outstanding on said date of computation, plus
- (2) The principal amount of all bonds of the association secured by such capital reserve fund, outstanding on said date of computation which matures during such fiscal year, plus
- (3) The amount of all annual sinking fund payments payable during such fiscal year with respect to any bonds of the association secured by such capital reserve fund, outstanding on said date of computation.

(b) “Annual sinking fund payment” shall mean the amount of money specified in the resolution authorizing term bonds as payable into a sinking fund during a particular fiscal year for the retirement of term bonds which mature after such fiscal year, but shall not include any amount payable by reason only of the maturity of a bond.

(c) “Available operating revenues” shall mean all amounts received on account of rentals and fees and other charges imposed by the association, if any, and income or interest earned or added to funds of the association due to the investment thereof and not required under the terms or provisions of any covenant or agreement with holders of any bonds or notes of the

association to be applied to any purposes other than payment of expenses of the association.

(d) “Amortized value,” when used with respect to securities purchased at a premium above or a discount below par, shall mean the value as of any given date obtained by dividing the total premiums or discount at which such securities were purchased by the number of interest payments remaining to maturity on such securities after such purchase, and by multiplying the amount so calculated by the number of interest payment dates having passed since the date of such purchase; and

(1) In the case of securities purchased at a premium, by deducting the product thus obtained from the purchase price, and

(2) In the case of securities purchased at a discount, by adding the product thus obtained to the purchase price.

(e) The association shall create and establish one (1) or more special funds (herein referred to as “capital reserve funds”), and shall credit each such capital reserve fund:

(1) Any proceeds of sale of notes or bonds, to the extent provided in the resolution or resolutions of the association authorizing the issuance thereof,

(2) Any funds directed to be transferred by the association to such fund, and

(3) Any other moneys which may be made available to the association for the purpose of such fund from any other source or sources.

(f) All moneys held in or credited to each such capital reserve fund, except as hereinafter provided, shall be used, as required, solely for the payment of the principal of bonds or of the sinking fund payments hereinafter mentioned with respect to such bonds, the purchase or redemption of bonds, the payment of interest on bonds or the payment of any redemption premium required to be paid when such bonds are redeemed prior to maturity; provided, however:

(1) That moneys in any such fund shall not be withdrawn therefrom at any time in such amount as would reduce the amount of such fund to less than the maximum capital reserve fund requirement, except for the

purposes of making payment, when due, with respect to such bonds, of principal or redemption price of, interest and the sinking fund payments, as the same become due, and for the payment of which other moneys of the association are not available.

(2) Any income or interest earned by, or increment to, any capital reserve fund due to the investment thereof may be transferred by the association to other funds or accounts of the association to the extent it does not reduce the amount of such capital reserve fund below the maximum capital reserve fund requirement.

(g) Within sixty (60) days after the close of the association's fiscal year, the chairman of the association shall certify to the state tax commission the amount, if any, required to maintain the capital reserve funds established pursuant to this section at the maximum capital reserve fund requirement, but only for any capital reserve fund of the association which is required by a resolution of the association to be maintained by a continuing appropriation from the sales tax account. The chairman of the association shall not be entitled to so certify to the state tax commission for any capital reserve fund of the association for bonds issued by the association after January 1, 1996.

(h) The association shall not issue bonds at any time if upon issuance there will be created a capital reserve fund and the amount in the capital reserve fund securing such bonds will be less than the maximum capital reserve fund requirement, unless the association, at the time of issuance of such bonds, shall deposit in such fund, from the proceeds of the bonds so to be issued, or sources other than the state sales tax fund [sales tax account], an amount which, together with the amount then in such fund, will not be less than the maximum capital reserve fund requirement.

(i) Moneys in a capital reserve fund not required for immediate use or disbursement may be invested in obligations of the state or the United States of America or obligations the principal of and interest on which are guaranteed by the state or the United States of America or obligations of agencies of the United States of America or any obligations which may from time to time be legally purchased by banks under title 26, Idaho Code, as investment of funds belonging to them or in their control. In computing the amount of a capital reserve fund for the purposes of this section,

securities in which all or a portion of such fund are invested shall be valued at par if purchased at par or, if purchased at other than par, at amortized value.

(j) The association shall create and establish such other fund or funds as may be necessary or desirable for its corporate purposes.

(k) In the event of the dissolution of the association, any funds or assets of the association remaining after paying its bonds, notes or other obligations shall revert to the state.

(l) The total principal amount of the association's outstanding bonds secured by a capital reserve fund entitled to appropriation from the state sales tax account pursuant to [section 67-6211\(g\), Idaho Code](#), and [section 63-3638\(4\), Idaho Code](#), shall not exceed the sum of eighty-nine million dollars (\$89,000,000).

History.

[I.C., § 67-6211](#), as added by 1974, ch. 104, § 16, p. 1210; am. 1976, ch. 283, § 6, p. 968; am. 1977, ch. 326, § 5, p. 914; am. 1978, ch. 288, § 2, p. 700; am. 1980, ch. 95, § 1, p. 204; am. 1984, ch. 194, § 1, p. 442; am. 1989, ch. 423, § 8, p. 1034; am. 1991, ch. 239, § 3, p. 574; am. 1996, ch. 253, § 14, p. 802; am. 1998, ch. 374, § 2, p. 1160; am. 2000, ch. 207, § 3, p. 527.

STATUTORY NOTES

Cross References.

State tax commission, Idaho [Const., Art. VII, § 12](#) and [§ 63-101](#) et seq.

Prior Laws.

Former § 67-6211, which comprised S.L. 1972, ch. 324, § 11, p. 789, was repealed by S.L. 1974, ch. 104, § 15.

Compiler's Notes.

The bracketed insertion in subsection (h) was added by the compiler to correct the name of the referenced account. See § 63-3623.

The words enclosed in parentheses so appeared in the law as enacted.

Section 4 of S.L. 1991, ch. 239 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 7 of S.L. 1976, ch. 283 declared an emergency. Approved March 31, 1976.

Section 6 of S.L. 1977, ch. 326 declared an emergency. Approved April 1, 1977.

Section 3 of S.L. 1978, ch. 288 declared an emergency. Approved March 29, 1978.

Section 2 of S.L. 1980, ch. 95 declared an emergency. Approved March 19, 1980.

Section 2 of S.L. 1984, ch. 194 declared an emergency. Approved April 3, 1984.

Section 3 of S.L. 1998, ch. 374 declared an emergency. Approved March 25, 1998.

§ 67-6212. Refunding of obligations. — The association may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this act, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any corporate purpose of the association. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the association in respect of the same shall be governed by the provisions of this act which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

Refunding obligations may be sold or exchanged for outstanding obligations issued under this act and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

History.

I.C., § 67-6212, as added by 1974, ch. 104, § 18, p. 1210; am. 1996, ch. 253, § 15, p. 802.

STATUTORY NOTES

Prior Laws.

Former § 67-6212, which comprised S.L. 1972, ch. 324, § 12, p. 789, was repealed by S.L. 1974, ch. 104, § 17.

Compiler's Notes.

The term “this act” in both paragraphs refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

§ 67-6213. Deposit of funds. — All moneys of the association except as otherwise authorized or provided in this act shall be deposited as soon as practicable in a separate account or accounts in banks organized under the laws of the state or national banking associations. All deposits of such moneys shall, if required by the association, be secured by obligations of the United States, of the state or of any municipalities or political subdivisions or agencies of the state at a market value equal at all times to the amount of the deposit, and all banks are authorized to give such security for such deposits.

Notwithstanding the provisions of this section, the association shall have power to contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment and payment of any moneys of the association and of any moneys held in trust or otherwise for the payment of notes or bonds, and to carry out such contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such moneys may be secured in the same manner as moneys of the association, and all banks are authorized to give such security for such deposits.

History.

I.C., § 67-6213, as added by 1974, ch. 104, § 20, p. 1210; am. 1996, ch. 253, § 16, p. 802.

STATUTORY NOTES

Prior Laws.

Former § 67-6213, which comprised S.L. 1972, ch. 324, § 13, p. 789, was repealed by S.L. 1974, ch. 104, § 19.

Compiler's Notes.

The term “this act” in the first sentence in the first paragraph refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

§ 67-6214. Rights of bondholder. — A bondholder of the association shall have the right, in addition to all other rights, which may be conferred on such bondholder, subject only to any contractual restrictions binding upon such bondholder, by mandamus, suit, action or proceedings at law or in equity to compel said association and the commissioners, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any contract of said association, with or for the benefit of such bondholder, and to require the carrying out of any or all such covenants and agreements of said association and the fulfillment of all duties imposed upon said association by this act.

History.

1972, ch. 324, § 14, p. 789; am. 1974, ch. 104, § 21, p. 1210; am. 1996, ch. 253, § 17, p. 802.

STATUTORY NOTES

Compiler's Notes.

The term “this act” at the end of the section refers to S.L. 1972, Chapter 324, which is compiled as §§ 67-6201 to 67-6207, 67-6209, 67-6210, 67-6214, 67-6216, 67-6218 to 67-6223 and 67-6224.

§ 67-6215. Rights not to be impaired by state. — The state does hereby pledge to and agree with the holders of any notes or bonds issued under this act that the state will not limit or alter the rights hereby vested in the association to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such notes and bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The association is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

History.

I.C., § 67-6215, as added by 1974, ch. 104, § 23, p. 1210; am. 1996, ch. 253, § 18, p. 802.

STATUTORY NOTES

Prior Laws.

Former § 67-6215, which comprised S.L. 1972, ch. 324, § 15, p. 789, was repealed by S.L. 1974, ch. 104, § 22.

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

§ 67-6215A. Remedies of bondholders. — In the event that the association shall default in the payment of principal of or interest on any issue of notes and bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty (30) days, or in the event that the association shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five percent (25%) in aggregate principal amount of the notes or bonds of such issue then outstanding, by instrument or instruments filed in the office of the clerk of the county of Ada, and proved or acknowledged in the same manner as a deed to be recorded, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

(a) Such trustee may, and upon written request of the holders of twenty-five percent (25%) in principal amount of such notes or bonds then outstanding shall, in his or its own name:

- (1) by suit, action or proceeding in accordance with the Idaho Code, enforce all rights of the noteholders or bondholders, including the right to require the association to carry out any agreements with such holders and to perform its duties under this chapter;
- (2) bring suit upon such notes or bonds;
- (3) by action or suit, require the association to account as if it were the trustee of an express trust for the holders of such notes or bonds;
- (4) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;
- (5) declare all such notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five percent (25%) of the principal amount of such notes or bonds then outstanding, annul such declaration and its consequences.

(b) The district court shall have jurisdiction of any suit, action or proceeding by the trustee on behalf of such noteholders or bondholders. The

venue of any such suit, action or proceeding shall be laid in the county of Ada.

(c) Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty (30) days' notice in writing to the association.

History.

I.C., § 67-6215A, as added by 1974, ch. 104, § 24, p. 1210; am. 1996, ch. 253, § 19, p. 802.

STATUTORY NOTES

Compiler's Notes.

The term "this act" near the middle of the first paragraph refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

§ 67-6215B. Legal investments. — The notes and bonds of the association shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The notes and bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

History.

I.C., § 67-6215B, as added by 1974, ch. 104, § 25, p. 1210; am. 1996, ch. 253, § 20, p. 802.

§ 67-6216. Authority to make loans. — The association is authorized to make loans to housing sponsors for the necessary expenses, prior to construction, in planning, and obtaining financing for, the rehabilitation or construction of housing projects. Such loans shall be made without interest and shall not exceed eighty percent (80%) of the reasonable costs expected to be incurred in planning, and in obtaining financing for, such housing prior to the availability of financing, including, but not limited to preliminary surveys and analyses of market needs, preliminary site engineering and architectural fees, site acquisition, application and mortgage commitment fees, and construction loan fees and discounts. The association shall require repayment of loans made under this section, under such terms and conditions as it may require, upon completion of the project or sooner, and may cancel any part or all of a loan if it determines that it cannot be recovered from the proceeds of any permanent loan made to finance the rehabilitation or construction of the housing project.

History.

1972, ch. 324, § 16, p. 789; am. 1974, ch. 104, § 26, p. 1210; am. 1996, ch. 253, § 21, p. 802.

§ 67-6217. Disbursement of moneys. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised S.L. 1972, ch. 324, § 17, p. 789, was repealed by S.L. 1974, ch. 104, § 27.

§ 67-6218. Feasibility. — The association shall encourage economically sound innovative approaches to housing development projects and, without limiting the foregoing, shall encourage consolidated financing through such techniques as blanket mortgages.

History.

1972, ch. 324, § 18, p. 789; am. 1974, ch. 104, § 28, p. 1210; am. 1996, ch. 253, § 22, p. 802.

§ 67-6219. Technical assistance. — The association may provide technical assistance to eligible housing sponsors of housing projects, including assistance in arranging financing.

History.

1972, ch. 324, § 19, p. 789; am. 1974, ch. 104, § 29, p. 1210; am. 1996, ch. 253, § 23, p. 802.

§ 67-6220. Audits — Annual reports. — (1) The legislative council is authorized to conduct a post audit of the books and records of the Idaho housing and finance association on the same basis as audits are conducted of state agencies.

(2) The association shall file its financial report for the year then ended with the secretary of state within one hundred twenty (120) days after the close of its fiscal year describing its activities during the preceding year. In such report it may make recommendations regarding additional legislation or other action it deems necessary to permit it to carry out the purposes of this act.

History.

1972, ch. 324, § 20, p. 789; am. 1977, ch. 326, § 4, p. 914; am. 1980, ch. 377, § 2, p. 960; am. 1989, ch. 423, § 9, p. 1034; am. 1993, ch. 327, § 36, p. 1186; am. 1996, ch. 253, § 24, p. 802.

STATUTORY NOTES

Cross References.

Legislative council, § 67-427.

Secretary of state, § 67-901 et seq.

Compiler's Notes.

The term “this act” at the end of subsection (2) refers to S.L. 1972, Chapter 324, which is compiled as §§ 67-6201 to 67-6207, 67-6209, 67-6210, 67-6214, 67-6216, 67-6218 to 67-6223 and 67-6224.

§ 67-6221. Conflict of interest. — Any member, officer or employee of the association who is interested either directly or indirectly, or who is an officer or employee of, or has an ownership interest in any firm or agency interested directly or indirectly in any contract with the association, including any loan to any housing sponsor, shall disclose this interest to the association. This interest shall be set forth in the minutes of the association, and the member, officer or employee having the interest shall not participate on behalf of the association in the authorization of any such contract.

History.

1972, ch. 324, § 21, p. 789; am. 1974, ch. 104, § 30, p. 1210; am. 1996, ch. 253, § 25, p. 802.

§ 67-6222. Exemption of real property of association from levy and sale by execution. — All real property of the association shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the association be a charge or lien upon its real property; provided, however, that the provisions of this section shall not apply to or limit the right of bondholders to foreclose or otherwise enforce any mortgage or other security of the association or the right of obligees and bondholders to pursue any remedies for the enforcement of any pledge or lien given by the association on its rents, fees or revenue or the right of obligees or bondholders to pursue any remedies conferred upon the same pursuant to this act.

History.

1972, ch. 324, § 22, p. 789; am. 1974, ch. 104, § 31, p. 1210; am. 1996, ch. 253, § 26, p. 802.

STATUTORY NOTES

Compiler's Notes.

The term “this act” at the end of the section refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

§ 67-6223. Borrowing power — Financial assistance — Cooperation with state and federal government. — In addition to the powers conferred upon the association by other provisions of this chapter, the association is empowered to administer any other state, private or federal assistance program including without limitation all tax credit programs, guaranty, loan or investment funds and block grants and to borrow money or accept contributions, grants or other financial assistance or investment from private sources or from the state or federal government for or in aid of any housing project, nonprofit facility, economic development project or agricultural facility within its area of operation, to take over or lease or manage any housing project, nonprofit facility, economic development project or agricultural facility or undertaking constructed or owned by the federal government, and to these ends, to comply with such conditions and to make such trust indentures, leases or agreements as may be necessary, convenient or desirable. It is the purpose and intent of this act to authorize the association to do any and all things necessary or desirable to secure the financial aid or cooperation of the state or federal government in the undertaking, construction, maintenance or operation of any housing project, nonprofit facility, economic development project or agricultural facility by the association. The association is specifically authorized to work with the Idaho department of agriculture in connection with any loan for an agricultural facility and the Idaho department of agriculture shall assist in the provisions of such loans.

History.

1972, ch. 324, § 23, p. 789; am. 1989, ch. 423, § 10, p. 1034; am. 1996, ch. 253, § 27, p. 802; am. 1997, ch. 191, § 5, p. 531; am. 2000, ch. 364, § 5, p. 1203; am. 2007, ch. 152, § 5, p. 463.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.

Amendments.

The 2007 amendment, by ch. 152, throughout the section, inserted “economic development project”; and in the first sentence, substituted “this chapter” for “this act,” and inserted “private,” “guaranty, loan or investment funds,” “or investment,” and “private sources or from.”

Compiler’s Notes.

The term “this act” in the second sentence refers to S.L. 1972, Chapter 324 which is compiled as §§ 67-6201 to 67-6207, 67-6209, 67-6210, 67-6214, 67-6216, 67-6218 to 67-6223, and 67-6224.

Effective Dates.

Section 6 of S.L. 1997, ch. 191 declared an emergency. Approved March 19, 1997.

Section 6 of S.L. 2000, ch. 364, declared an emergency. Approved April 14, 2000.

Section 6 of S.L. 2007, ch. 152 declared an emergency. Approved March 22, 2007.

§ 67-6223A. Donations to housing and finance association. — The state of Idaho or any city or county located in the state of Idaho shall have the power, from time to time, to donate money, real property, or personal property to the Idaho housing and finance association; provided, however, that nothing contained in this provision or in any other provision of law shall be construed as authorizing the state or any political subdivision thereof to give credit or make loans to the association or create any debts or indebtedness on behalf of the association.

History.

I.C., § 67-6223A, as added by 1974, ch. 104, § 32, p. 1210; am. 1996, ch. 253, § 28, p. 802.

§ 67-6224. Construction of act. — Nothing in this act or any other law shall be construed as authorizing the association to levy or collect taxes or assessments, to create any indebtedness payable out of taxes or assessments, or in any manner to pledge the credit of the city, the county, the state or any subdivision thereof and the notes, bonds or other obligations of the association shall not be, constitute or become an indebtedness, debt or liability of the state of Idaho, the legislature thereof, or of any county, city, town, township, board of education or school district, or other subdivision of the state, or of any other political subdivision or body corporate and politic of or municipality within the state and neither the state of Idaho, the legislature thereof, or any county, city, town, township, board of education or school district, or other subdivision of the state or any other political subdivision or body corporate and politic or municipality within the state shall be liable thereon nor shall such notes, bonds or obligations of the association constitute the giving, pledging or loaning of the credit of the state of Idaho, the legislature thereof, or of any county, city, town, township, board of education or school district, or other subdivision of the state, or of any other political subdivision or body corporate and politic of or municipality within the state, nor shall they be payable out of any funds other than those of the association; and such notes and bonds shall contain on the face thereof a statement to such effect.

History.

1972, ch. 324, § 24, p. 789; am. 1974, ch. 104, § 33, p. 1210; am. 1996, ch. 253, § 29, p. 802.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1972, Chapter 324 which is compiled as §§ 67-6201 to 67-6207, 67-6209, 67-6210, 67-6214, 67-6216, 67-6218 to 67-6223, and 67-6224.

Section 25 of S.L. 1972, ch. 324 read: “Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling

legislative intent, that if any provision of this act or the application thereof to any person or circumstance, is held invalid, the remainder of this act and the application of such provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.”

§ 67-6224A. Legislative construction. — Neither this act nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the association might otherwise have under any laws of this state, and this act is cumulative to any such powers. This act does and shall be construed to provide a complete, additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes and other obligations and refunding bonds under the provisions of this act need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations and contracts for the construction and acquisition of any housing projects undertaken pursuant to this act need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state-owned property. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this act.

History.

I.C., § 67-6224A, as added by 1974, ch. 104, § 34, p. 1210; am. 1996, ch. 253, § 30, p. 802.

STATUTORY NOTES

Compiler's Notes.

The term “this act” throughout this section refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

§ 67-6225. Constitutionality. — Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent, that if any provision of this act or the application thereof to any person or circumstance is held invalid, the remainder of this act and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

If any section, subdivision, paragraph, sentence, clause or provision of this act shall be unconstitutional or ineffective, in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

History.

I.C., § 67-6225, as added by 1974, ch. 104, § 36, p. 1210.

STATUTORY NOTES

Prior Laws.

Former § 67-6225, which comprised S.L. 1972, ch. 324, § 26, p. 789 was repealed by S.L. 1974, ch. 104, § 35.

Compiler's Notes.

The term “this act” throughout this section refers to S.L. 1974, Chapter 104, which is compiled as §§ 67-6201 to 67-6208, 67-6210 to 67-6216, 67-6218, 67-6219, 67-6221, 67-6222, and 67-6223A to 67-6225.

Effective Dates.

Section 37 of S.L. 1974, ch. 104 declared an emergency. Approved March 27, 1974.

§ 67-6226. Non-agency status. — It is recognized that the association is not, and has not been since its inception, a state or local agency for purposes of Idaho law.

History.

I.C., § 67-6226, as added by 1996, ch. 253, § 31, p. 802; am. 2000, ch. 342, § 14, p. 1146.

STATUTORY NOTES

Effective Dates.

Section 41 of S.L. 1996, ch. 253 declared an emergency. Approved March 14, 1996.

Chapter 63

CONSTITUTIONAL DEFENSE COUNCIL

Sec.

67-6301. Constitutional defense council created — Members — Powers — Staff — Fund.

67-6302. Legislative approval required for certain actions.

67-6303 — 67-6305. [Repealed.]

§ 67-6301. Constitutional defense council created — Members — Powers — Staff — Fund. — (1) There is hereby created the constitutional defense council which shall consist of the governor, the president pro tempore of the senate, the speaker of the house of representatives and the attorney general.

(2) The purpose of the council includes, but is not limited to, restoring, maintaining and advancing the sovereignty and authority over issues that affect this state and the well-being of its citizens.

(3) Meetings of the council may be called by any member and decisions of the council shall be made by a majority vote of the members.

(4) The council, in the name of the state or its citizens, may examine and challenge by legal action, legislation or any other legal means: (a) Federal mandates.

(b) Court rulings.

(c) The authority granted to, or assumed by, the federal government.

(d) Laws, regulations and practices of the federal government.

(e) Any other activity that is deemed appropriate by the council.

(f) Notwithstanding any other provision of law to the contrary, the council may hire legal counsel for the purpose of this chapter and may utilize staff and resources within state government.

(5) There is hereby established in the state treasury the constitutional defense council fund which shall consist of appropriations, gifts, grants and other council moneys. Moneys in the council fund are continuously appropriated and shall be used for purposes enumerated in this chapter.

History.

I.C., § 67-6301, as added by 1995, ch. 327, § 2, p. 1096.

STATUTORY NOTES

Prior Laws.

Former § 67-6301 which comprised 1972, ch. 338, § 1, p. 992, was repealed by § 1 of S.L. 1995, ch. 327, effective July 1, 1995.

§ 67-6302. Legislative approval required for certain actions. — No action may be taken by any federal agency, state, state agency or any entity to introduce or to reintroduce any species into the state of Idaho without first securing the approval of the Idaho state legislature.

History.

I.C., § 67-6302, as added by 2000, ch. 416, § 1, p. 1327; am. 2017, ch. 135, § 1, p. 327.

STATUTORY NOTES

Prior Laws.

Former § 67-6302, which comprised 1972, ch. 338, § 2, p. 992, was repealed by § 1 of S.L. 1995, ch. 327, effective July 1, 1995.

Amendments.

The 2017 amendment, by ch. 135, rewrote the section which formerly read: “No action may be taken by a federal agency including the United States fish and wildlife service, or any entity acting on behalf of a federal agency, to introduce or to reintroduce any species into the state of Idaho without first securing the approval of the Idaho state legislature”.

§ 67-6303 — 67-6305. Duties of Bicentennial Commission — Meetings and hearings — Fund — Appropriation. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

These sections which comprised 1972, ch. 338, §§ 3 — 5, p. 992; am. 1973, ch. 182, § 426; am. 1994, ch. 180, § 228, p. 420, were repealed by § 1 of S.L. 1995, ch. 327, effective July 1, 1995.

Chapter 64

IDAHO STATE BUILDING AUTHORITY ACT

Sec.

67-6401. Short title.

67-6402. Definitions.

67-6403. Creation of authority.

67-6404. Declaration of policy.

67-6405. Appointment and removal of commissioners.

67-6406. Executive director.

67-6407. Conflict of interest.

67-6408. No forfeiture of office.

67-6409. General powers of the authority.

67-6410. Procedure prior to financing building developments or building projects.

67-6411. Cooperation with municipalities, state bodies or community college districts.

67-6412. Exemption from taxation.

67-6413. Annual report.

67-6414. Bonding provisions.

67-6415. Refunding obligations — Issuance.

67-6416. Refunding obligations — Use of proceeds.

67-6417. Deposit of authority moneys.

67-6418. Contract of the state.

67-6419. Limitation of liability on authority obligations.

67-6420. Remedies of bond and note holders.

67-6421. State grants and leases to authority.

67-6422. Authority obligations are legal investments.

67-6423. Act not a limitation of powers.

67-6424. Inconsistency with other laws.

Idaho Code § 67-6401

§ 67-6401. Short title. — This chapter may be referred to as and cited as “Idaho State Building Authority Act.”

History.

1974, ch. 111, § 1, p. 1263.

§ 67-6402. Definitions. — As used in this chapter the following words and terms have the following meanings, unless a different meaning clearly appears from the context:

(a) “Authority” means the Idaho state building authority created and established pursuant to [section 67-6403, Idaho Code](#).

(b) “Bonds,” “notes” or “bond anticipation notes” and “other obligations” mean any bonds, notes, debentures, interim certificates or other evidences of financial indebtedness, respectively, issued by the state building authority pursuant to this chapter.

(c) “Community college district” means any community college district organized and existing under chapter 21, title 33, Idaho Code.

(d) “Federal government” means the United States of America, or any agency or instrumentality, corporate or otherwise of the United States of America.

(e) “Facility” means any work or undertaking, whether new construction or rehabilitation, which is designed and financed pursuant to the provisions of this act and designed for use as an office building, laboratory, library, dining room, instructional facility, motor vehicle parking, storage or service facility or for any other use by any state body or community college district and all other real or personal properties which are necessary, convenient, or desirable appurtenances, such as but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and such equipment which may be necessary to constitute a fully equipped and modern building as the authority determines to be necessary or convenient to accomplish the purposes of this act.

(f) “Municipality” means any city, municipal corporation, or other political subdivision of this state.

(g) “Real property” means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms of years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

(h) “State” means the state of Idaho.

(i) “State body” means any department, board, commission, or agency of the state of Idaho.

History.

1974, ch. 111, § 2, p. 1263; am. 1978, ch. 239, § 1, p. 511; am. 2003, ch. 349, § 1, p. 932.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” in subsection (e) refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6403. Creation of authority. — There is hereby created and established an independent public body corporate and politic to be known as the Idaho state building authority to carry out the provisions of this act. The authority is hereby constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the authority of the powers conferred by this act shall be deemed and held to be the performance of an essential governmental function of the state. The authority shall not have the power to levy and collect taxes.

History.

1974, ch. 111, § 3, p. 1263.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the first and second sentences refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6404. Declaration of policy. — It is hereby declared:

(a) the functions of government have multiplied many times since the admission of the state of Idaho into the union in 1890;

(b) in view of the many increased functions of government, it is necessary that proper provision of office space and related facilities for the many departments, agencies and commissions of state government and its instrumentalities be provided; many such state governmental bodies are inadequately provided with the necessary office space and related facilities;

(c) it is to the economic benefit of the citizens of the state of Idaho to provide sufficient office space and the necessary related facilities for such state governmental bodies and thus provide a more efficient and more economical operation of state government.

It is further declared that in order to provide for a fully adequate supply of governmental facilities at costs that state government can afford, the legislature finds it necessary to create and establish a state building authority for the purpose of constructing and operating such facilities to meet the needs of the state government.

It is hereby further declared to be necessary and in the public interest that such state building authority provide for predevelopment costs, temporary financing, land development expenses, construction and operation of governmental facilities for rental to state government.

It is hereby further declared that the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, or granted, and that such activities serve a public purpose in improving or otherwise benefiting the people of this state; that the necessity of enacting the provisions hereinafter set forth is in the public interest and is hereby so declared as a matter of express legislative determination.

History.

1974, ch. 111, § 4, p. 1263.

OPINIONS OF ATTORNEY GENERAL

Scope of Authority.

The legislature has enacted legislation authorizing the sale of public buildings which are surplus property and has authorized the grant of properties to the state building authority. OAG 83-2.

§ 67-6405. Appointment and removal of commissioners. — (a) The powers of the authority shall be vested in a board of seven (7) commissioners appointed by the governor for terms of five (5) years with advice and consent of a majority of the members of the senate. No commissioner appointed after January 1, 1978, shall also serve as a member of the permanent building council created in section 67-5710, Idaho Code. Of the commissioners first appointed, two (2) commissioners shall serve for terms ending one (1) year from January first next succeeding the date of their appointment, two (2) commissioners shall serve for terms ending two (2) years from January first next succeeding their appointment and one (1) of the remaining three (3) commissioners shall serve for a term of three (3), four (4) and five (5) years, respectively. Any vacancies in the membership of the authority shall be filled in like manner but only for the remainder of an unexpired term. Each commissioner shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any commissioner shall be eligible for reappointment.

(b) The commissioners shall elect from among their number a chairman and a vice chairman annually and such other officers as it may determine. Meetings shall be held at the call of the chairman or whenever two (2) commissioners so request. Four (4) commissioners of the authority shall constitute a quorum and the affirmative vote of four (4) commissioners shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(c) Commissioners shall be compensated as provided by [section 59-509\(o\), Idaho Code](#).

(d) For incompetency or neglect of duty or malfeasance in office, a commissioner of the authority may be removed from office by the governor in the manner provided by law.

History.

1974, ch. 111, § 5, p. 1263; am. 1978, ch. 239, § 2, p. 511; am. 1980, ch. 247, § 93, p. 582; am. 2001, ch. 34, § 1, p. 53.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 34 declared an emergency. Approved March 5, 2001.

§ 67-6406. Executive director. — (a) The commissioners shall employ an executive director who shall also be the secretary and who shall administer, manage and direct the affairs and business of the authority, subject to the policies, control and direction of the commissioners. The commissioners may employ technical experts and such other officers, agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties and compensation. The commissioners may delegate to one or more of its agents or employees such administrative duties as it may deem proper.

(b) The secretary shall keep a record of the proceedings of the authority and shall be custodian of all books, documents and papers filed with the authority and of its minute book and seal. He shall have authority to cause to be made copies of all minutes and other records and documents of the authority and to give certificates under the seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely upon such certificates.

History.

1974, ch. 111, § 6, p. 1263.

§ 67-6407. Conflict of interest. — No commissioner or employee of the authority shall acquire any interest direct or indirect in any facility financed under this act or in any property included or planned to be included in any such facility, nor shall he have any interest direct or indirect in any contract or proposed contract for materials or services to be furnished or used in connection with any such facility. If any commissioner or employee of the authority owns or controls an interest direct or indirect in any property included or planned to be included in any such facility, he immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure so to disclose such interest shall constitute misconduct in office. Upon such disclosure such commissioner or employee shall not participate in any action by the authority affecting such property.

History.

1974, ch. 111, § 7, p. 1263.

STATUTORY NOTES

Compiler's Notes.

The term "this act" in the first sentence refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6408. No forfeiture of office. — Notwithstanding the provisions of any other law, no officer or employee of this state shall be deemed to have forfeited or shall forfeit his office or employment by reason of his acceptance of membership on the authority or his service thereon.

History.

1974, ch. 111, § 8, p. 1263.

§ 67-6409. General powers of the authority. — The authority is hereby granted, has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purposes, including, without limitation, the following:

- (a) sue and be sued in its own name;
- (b) have an official seal and to alter the same at pleasure;
- (c) have perpetual succession;
- (d) maintain an office at such place or places within this state as it may designate;
- (e) adopt and from time to time amend and repeal bylaws and rules and regulations, not inconsistent with this chapter, to carry into effect the powers and purposes of the authority and the conduct of its business;
- (f) make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions;
- (g) acquire real or personal property, or any interest therein, on either a temporary or long-term basis in the name of the authority by gift, purchase, transfer, foreclosure, lease or otherwise including rights or easements; hold, sell, assign, lease, encumber, mortgage or otherwise dispose of any real or personal property, or any interest therein, or mortgage interest owned by it or under its control, custody or in its possession and release or relinquish any right, title, claim, lien, interest, easement or demand however acquired, including any equity or right of redemption in property foreclosed by it and to do any of the foregoing by public sale, with such public bidding as shall be required by the provisions of any other law;
- (h) to lease or rent any lands, buildings, structures, facilities or equipment from private parties to effectuate the purposes of this act;
- (i) to enter into agreements or other transactions with and accept grants and the cooperation of the United States or any agency thereof or of the state of Idaho or any agency or governmental subdivision thereof in furtherance of the purposes of this act, including but not limited to the development, maintenance, operation and financing of any facility and to do

any and all things necessary in order to avail itself of such aid and cooperation;

(j) to receive and accept aid or contributions from any source of money, property, labor or other things of value, to be held, used and applied to carry out the purposes of this act subject to such conditions upon which such grants and contributions may be made, including, but not limited to, gifts or grants from any department or agency of the United States or this state or any community college district for any purpose consistent with this act;

(k) to employ architects, engineers, attorneys, accountants, building construction and financial experts and such other advisors, consultants and agents as may be necessary in its judgment and to fix their compensation;

(l) to procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable;

(m) to invest any funds not needed for immediate use or disbursement, including any funds held in reserve, in:

(1) bonds, notes and other obligations of the United States or any agency or instrumentality thereof and other securities secured by such bonds, notes or other obligation;

(2) money market funds which are insured or the assets of which are limited to obligations of the United States or any agency or instrumentality thereof;

(3) time certificates of deposit and savings accounts;

(4) commercial paper which, at the time of its purchase, is rated in the highest category by a nationally recognized rating service; and

(5) property or securities in which the state treasurer may invest funds in the state treasury pursuant to [section 67-1210, Idaho Code](#).

(n) to borrow money and issue bonds and notes or other evidences of indebtedness thereof as hereinafter provided;

(o) to the extent permitted under its contract with the holders of bonds, notes and other obligations of the authority to consent to any modification

of any contract, lease or agreement of any kind to which the authority is a party;

(p) to manage or operate real and personal property, in the state, take assignments of leases and rentals, proceed with foreclosure actions, or take any other action necessary or incidental to the performance of its corporate duties;

(q) to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter;

(r) to plan, carry out, acquire, lease and operate facilities and to provide for the construction, reconstruction, improvement, alteration or repair of any facility or part thereof;

(s) to sell, lease, rent or sublease to any state body or community college district, any facility or any space embraced in any facility constructed or leased under this act, to establish and revise the rents or charges therefor and to do any other acts necessary to the management and operation of its facilities;

(t) to do any act necessary or convenient to the exercise of the powers herein granted or reasonably implied therefrom.

History.

1974, ch. 111, § 9, p. 1263; am. 1978, ch. 239, § 3, p. 511; am. 1986, ch. 151, § 1, p. 436; am. 2003, ch. 349, § 2, p. 932.

STATUTORY NOTES

Compiler's Notes.

The term "this act" throughout this section refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

OPINIONS OF ATTORNEY GENERAL

Scope of Authority.

The legislature has enacted legislation authorizing the sale of public buildings which are surplus property and has authorized the grant of

properties to the state building authority. OAG 83-2.

§ 67-6410. Procedure prior to financing building developments or building projects. — Notwithstanding any other provision of this act, the authority is not empowered to finance any facility pursuant to section 67-6409, Idaho Code, unless:

(a) Prior approval by the legislature has been given by concurrent resolution authorizing a state body or community college district to have the authority provide a specific facility; (b) A state body or community college district has entered into an agreement with the authority for the authority to provide a facility; and (c) The authority finds that the building development or building project to be assisted pursuant to the provisions of this act, will be of public use and will provide a public benefit.

History.

1974, ch. 111, § 10, p. 1263; am. 1978, ch. 239, § 4, p. 511; am. 2003, ch. 349, § 3, p. 932.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the first paragraph and in subsection (c) refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6411. Cooperation with municipalities, state bodies or community college districts. — (a) The authority may obtain the aid and cooperation of the municipalities in which such facilities are to be located and shall have the power to enter into:

(1) such agreements and arrangements as it deems necessary or advisable to obtain such aid and cooperation; and (2) agreements with municipalities or counties for the furnishing, installing, opening, or closing of streets, roads, alleys, sidewalks or other places, or for the furnishing of property, sewage, water, and other services in connection with facilities financed under this act or for the changing of the map of a political subdivision of the planning, replanning, zoning, or rezoning of any part of a political subdivision.

(b) The authority and any state body or community college district may join or cooperate with each other, either jointly or otherwise, in the exercise of any of their powers for the purpose of planning, undertaking, owning, constructing or contracting with respect to a facility.

History.

1974, ch. 111, § 11, p. 1263; am. 2003, ch. 349, § 4, p. 932.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in paragraph (a)(2) refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6412. Exemption from taxation. — (a) As set forth in the declaration of finding and purpose herein, the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter, and the notes and bonds of the authority issued pursuant to this act, and the income therefrom including any profit made on the sale thereof and all its fees, charges, gifts, grants, revenues, receipts, and other moneys received, pledged to pay or secure the payment of such notes or bonds shall at all times be free from taxation of every kind by the state and by the municipalities and all other political subdivisions of the state.

(b) The property of the authority and its income and operation shall be exempt from taxation or assessments upon any property acquired or used by the authority under the provisions of this act.

History.

1974, ch. 111, § 12, p. 1263.

STATUTORY NOTES

Cross References.

Declaration of policy for chapter, § 67-6404.

Compiler's Notes.

The term “this act” in subsections (a) and (b) refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6413. Annual report. — The authority shall submit to the governor within ninety (90) days after the end of its fiscal year a complete and detailed report setting forth:

(a) its operations and accomplishments; (b) its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes; (c) its assets and liabilities at the end of its fiscal year, including the status of reserve, special or other funds; and (d) a schedule of its notes and bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year.

History.

1974, ch. 111, § 13, p. 1263.

§ 67-6414. Bonding provisions. —

(a)(1) The authority shall have power and is hereby authorized to issue from time to time its notes and bonds in such principal amount as the authority shall determine to be necessary to provide sufficient funds for achieving any of its corporate purposes, including the payment of interest on notes and bonds of the authority, establishment of reserves to secure such notes and bonds, and all other expenditures of the authority incident to and necessary or convenient to carry out its corporate purposes and powers.

(2) The authority shall have the power, from time to time, to issue (i) notes to renew notes and (ii) bonds, to pay notes, including the interest thereon, and whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, and to issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. The refunding bonds may be (i) exchanged for bonds to be refunded or (ii) sold and the proceeds applied to the purchase, redemption or payment of such bonds.

(3) Except as may otherwise be expressly provided by the authority, every issue of its notes and bonds shall be general obligations of the authority payable out of any revenues or moneys of the authority, subject only to any agreements with the holders of particular notes or bonds pledging any particular revenues.

(b) The notes and bonds shall be authorized by resolution or resolutions of the authority, shall bear such date or dates and shall mature at such time or times as such resolution or resolutions may provide, except that no bond shall mature more than fifty (50) years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments or as term bonds or as a combination thereof. The notes and bonds shall bear interest at such rate or rates, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The notes and bonds of the authority may be sold by the

authority, at public or private sale, at such price or prices as the authority shall determine.

(c) Any resolution or resolutions authorizing any notes or bonds or any issue thereof may contain provisions, which shall be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenues to secure the payment of the notes or bonds or of any issue thereof, subject to such agreements with noteholders or bondholders as may then exist;

(2) pledging all or any part of the assets of the authority to secure the payment of the notes or bonds or of any issue of notes or bonds, subject to such agreements with noteholders or bondholders as may then exist;

(3) the setting aside of reserves or sinking funds and the regulation and disposition thereof;

(4) limitations on the purpose to which the proceeds of sale of notes or bonds may be applied and pledging such proceeds to secure the payment of the notes or bonds or of any issue thereof;

(5) limitations on the issuance of additional notes or bonds; the terms upon which additional notes or bonds may be issued and secured; and the refunding of outstanding or other notes or bonds;

(6) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto; and the manner in which such consent may be given;

(7) limitations on the amount of moneys to be expended by the authority for operating expenses of the authority;

(8) vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to this act and limiting or abrogating the right of the bondholders to appoint a trustee under this act or limiting the rights, powers and duties of such trustee;

(9) defining the acts or omissions to act which shall constitute a default in the obligations and duties of the state building authority to the holders of

the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and the other provisions of this act;

(10) any other matters, of like or different character, which in any way affect the security or protection of the holders of the notes or bonds.

(d) Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(e) Neither the commissioners of the authority nor any other person executing such notes or bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The authority, subject to such agreements with noteholders or bondholders as may then exist, shall have power out of any funds available therefor to purchase notes or bonds of the authority, which shall thereupon be cancelled, at a price not exceeding

(1) if the notes or bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment thereon, or

(2) if the notes or bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the notes or bonds become subject to redemption plus accrued interest to such date.

(g) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee which may be any trust company or bank having the power of a trust company in the state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the

duties of the authority in relation to the exercise of its corporate powers and the custody, safeguarding and application of all moneys. The authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(h) Whether or not the notes and bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the notes and bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the notes and bonds for registration.

(i) In case any of the commissioners or officers of the authority whose signatures appear on any notes or bonds or coupons shall cease to be such commissioners or officers before the delivery of such notes or bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such commissioners or officers had remained in office until such delivery.

History.

1974, ch. 111, § 14, p. 1263.

STATUTORY NOTES

Cross References.

Uniform commercial code — negotiable instruments, § 28-3-101 et seq.

Compiler's Notes.

The term “this act” in paragraphs (c)(8) and (c)(9) refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6415. Refunding obligations — Issuance. — The authority may provide for the issuance of refunding obligations for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations and for any corporate purpose of the authority. The issuance of such obligations, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of obligations, insofar as such provisions may be appropriate therefor.

History.

1974, ch. 111, § 15, p. 1263.

§ 67-6416. Refunding obligations — Use of proceeds. — Refunding obligations issued as provided in section 67-6412 [67-6415, Idaho Code,] may be sold or exchanged for outstanding obligations issued under this act and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding obligations. Pending the application of the proceeds of any such refunding obligations, with any other available funds, to the payment of the principal, accrued interest and any redemption premium on the obligations being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding obligations or in the trust agreement securing the same, to the payment of any interest on such refunding obligations and any expenses in connection with such refunding, such proceeds may be invested in direct obligations of, or obligations the principal of and the interest on which are unconditionally guaranteed by the United States of America which shall mature or which shall be subject to redemption by the holders thereof, at the option of such holders, not later than the respective dates when the proceeds, together with the interest accruing thereon, will be required for the purposes intended.

History.

1974, ch. 111, § 16, p. 1263.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the first sentence was added by the compiler to correct an inaccurate reference in the 1974 enacting legislation and to conform to the statutory citation style.

The term “this act” in the first sentence refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6417. Deposit of authority moneys. — (a) All moneys of the authority except as otherwise authorized or provided in this act shall be deposited as soon as practicable in a separate account or accounts in banks or trust companies organized under the laws of the state or national banking association. The moneys in such accounts shall be paid out on checks signed by the executive director or such other officers or employees of the authority as the authority shall authorize. All deposits of such moneys shall, if required by the authority, be secured by obligations of the United States, of the state or of any municipalities or political subdivisions or agencies of the state at a market value equal at all times to the amount of the deposit, and all banks and trust companies are authorized to give such security for such deposits.

(b) Notwithstanding the provisions of this section, the authority shall have power to contract with the holders of any of its notes or bonds as to the custody, collection, securing, investment and payment of any moneys of the authority and of any moneys held in trust or otherwise for the payment of notes or bonds, and to carry out such contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds and deposits of such moneys may be secured in the same manner as moneys of the authority, and all banks and trust companies are authorized to give such security for such deposits.

History.

1974, ch. 111, § 17, p. 1263.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the first sentence in subsection (a) refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6418. Contract of the state. — The state does hereby pledge to and agree with the holders of any notes or bonds issued under this chapter that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the said holders thereof or in any way impair the rights and remedies of such holders until such notes and bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged. The authority is authorized to include this pledge and agreement of the state in any agreement with the holders of such notes or bonds.

History.

1974, ch. 111, § 18, p. 1263.

§ 67-6419. Limitation of liability on authority obligations. — The notes, bonds or other obligations of the authority shall not be or become an indebtedness or obligation of the state of Idaho, or of any department, board, commission, agency, political subdivision, body corporate and politic, or instrumentality of or county within the state nor shall such notes, bonds or obligations of the authority constitute the giving or loaning of the credit of the state of Idaho, or of any department, board, commission, agency, political subdivision, body corporate and politic or instrumentality of or municipality or county within the state, nor shall they be payable out of any funds other than those of the authority; and such notes and bonds shall contain on the face thereof a statement to such effect.

History.

1974, ch. 111, § 19, p. 1263.

§ 67-6420. Remedies of bond and note holders. — (a) In the event that the authority shall default in the payment of principal of or interest on any issue of notes and bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty (30) days, or in the event that the authority shall fail or refuse to comply with the provisions of this act, or shall default in any agreement made with the holders of any issue of notes or bonds, the holders of twenty-five per cent (25%) in aggregate principal amount of the notes or bonds of such issue then outstanding, may appoint a trustee to represent the holders of such notes or bonds for the purposes herein provided.

(b) Such trustee may, and upon written request of the holders of twenty-five per cent (25%) in principal amount of such notes or bonds then outstanding shall, in his or its own name:

- (1) by suit, action or proceeding enforce all rights of the noteholders or bondholders, including the right to require the authority to carry out any agreements with such holders and to perform its duties under this act;
- (2) bring suit upon such notes or bonds;
- (3) by action or suit, require the authority to account as if it were the trustee of an express trust for the holders of such notes or bonds;
- (4) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such notes or bonds;
- (5) declare all such notes or bonds due and payable, and if all defaults shall be made good, then, with the consent of the holders of twenty-five per cent (25%) of the principal amount of such notes or bonds then outstanding, annul such declaration and its consequences.

(c) Before declaring the principal of notes or bonds due and payable, the trustee shall first give thirty (30) days' notice in writing to the authority.

History.

1974, ch. 111, § 20, p. 1263.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in subsection (a) and paragraph (b)(1) refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

§ 67-6421. State grants and leases to authority. — The state may make grants of money or property and may lease property to the authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers, including, but not limited to, deposits to the reserve funds of the authority. Notwithstanding any other provision of law to the contrary, the state may lease, with or without consideration, real or personal property to the authority for a term not to exceed fifty (50) years. This section shall not be construed to limit any other power the state may have to make such grants or to lease property to the authority, or to enter into other transactions with the authority.

History.

1974, ch. 111, § 21, p. 1263; am. 2001, ch. 34, § 2, p. 53.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 2001, ch. 34 declared an emergency. Approved March 5, 2001.

OPINIONS OF ATTORNEY GENERAL

Scope of Authority.

The legislature has enacted legislation authorizing the sale of public buildings which are surplus property and has authorized the grant of properties to the state building authority. OAG 83-2.

§ 67-6422. Authority obligations are legal investments. — The notes and bonds of the authority shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The notes and bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

History.

1974, ch. 111, § 22, p. 1263.

§ 67-6423. Act not a limitation of powers. — Neither this act nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state, and this act is cumulative to any such powers. This act does and shall be construed to provide a complete, additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. However, the issuance of bonds, notes and other obligations and refunding bonds under the provisions of this act need not comply with the requirements of any other state law applicable to the issuance of bonds, notes and other obligations. Contracts for the construction and acquisition of any facilities undertaken pursuant to this act need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of property by the state or a community college district. No proceedings, notice or approval shall be required for the issuance of any bonds, notes and other obligations or any instrument as security therefor, except as is provided in this act.

History.

1974, ch. 111, § 23, p. 1263; am. 2003, ch. 349, § 5, p. 932.

STATUTORY NOTES

Compiler's Notes.

The term “this act” throughout the section refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

OPINIONS OF ATTORNEY GENERAL

Scope of Authority.

The legislature has enacted legislation authorizing the sale of public buildings which are surplus property and has authorized the grant of properties to the state building authority. OAG 83-2.

§ 67-6424. Inconsistency with other laws. — Insofar as the provisions of this act are inconsistent with the provisions of any other law, general, specific or local, the provisions of this act shall be controlling.

History.

1974, ch. 111, § 25, p. 1263.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in this section refers to S.L. 1974, Chapter 111, which is compiled as §§ 67-6401 to 67-6424.

Section 24 of S.L. 1974, ch. 111, read: “Severability. — If any section, subdivision, paragraph, sentence, clause or provision of this act shall be unconstitutional or ineffective, in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.”

Chapter 65

LOCAL LAND USE PLANNING

Sec.

67-6501. Short title.

67-6502. Purpose.

67-6503. Participation of local governments.

67-6504. Planning and zoning commission — Creation — Membership — Organization — Rules — Records — Expenditures — Staff.

67-6505. Joint planning and zoning commission — Formation — Duties.

67-6506. Conflict of interest prohibited.

67-6507. The planning process and related powers of the commission.

67-6508. Planning duties.

67-6509. Recommendation and adoption, amendment, and repeal of the plan.

67-6509A. Siting of manufactured homes in residential areas — Plan to be amended.

67-6509B. Manufactured housing community — Equal treatment required.

67-6510. Mediation — Time limitations tolled.

67-6511. Zoning ordinance.

67-6511A. Development agreements.

67-6512. Special use permits, conditions, and procedures.

67-6513. Subdivision ordinance.

67-6514. Existing zoning or subdivision ordinances.

67-6515. Planned unit developments.

67-6515A. Transfer of development rights.

67-6516. Variance — Definition — Application — Notice — Hearing.

67-6517. Future acquisitions map.

67-6518. Standards.

67-6519. Application granting process.

67-6520. Hearing examiners.

67-6521. Actions by affected persons.

67-6522. Combining of permits — Permits to assessor.

67-6523. Emergency ordinances and moratoriums.

67-6524. Interim ordinances and moratoriums.

67-6525. Plan and zoning ordinance changes upon annexation of unincorporated area.

67-6526. Areas of city impact — Negotiation procedure.

67-6527. Violations — Criminal penalties — Enforcement.

67-6528. Applicability of ordinances.

67-6529. Applicability to agricultural land — Counties may regulate siting of certain animal operations and facilities.

67-6529A. Short title.

67-6529B. Legislative findings and purposes.

67-6529C. Definitions.

67-6529D. Odor management plans — County request for suitability determination — Local regulation.

67-6529E. Process for county request — Contents of the request.

67-6529F. Department responsibilities — Authority to adopt rules and contract with other agencies.

67-6529G. Report of CAFO site advisory team — County action.

67-6529H. Site suitability determination — Application fees.

67-6530. Declaration of purpose.

67-6531. Single family dwelling.

67-6532. Licensure, standards and restrictions.

67-6533. Location of stores selling sexual material restricted in certain areas.

67-6534. Adoption of hearing procedures.

67-6535. Approval or denial of any application to be based upon express standards and to be in writing.

67-6536. Transcribable record.

67-6537. Use of surface and ground water.

67-6538. Use for designed purpose protected — When vacancy occurs.

67-6539. Limitations on regulation of short-term rentals and vacation rentals.

§ 67-6501. Short title. — This act shall be known as the “Local Land Use Planning Act.”

History.

I.C., § 67-6501, as added by 1975, ch. 188, § 2, p. 515; am. 1995, ch. 181, § 2, p. 664; am. 1999, ch. 396, § 1, p. 1099.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 1975, Chapter 188, which is compiled as §§ 67-6501 to 67-6509, 67-6511, 67-6512 to 67-6515, and 67-6516 to 67-6529.

CASE NOTES

Effect on existing ordinances.

Exhaustion of remedies.

Implied variance of zoning laws.

Jurisdiction.

Purpose.

Standards for street naming and numbering.

Effect on Existing Ordinances.

This chapter in no way “effectively invalidated” any prior zoning ordinances; it merely requires the counties to amend or create a zoning ordinance in accordance with their comprehensive plan. **McCuskey v. Canyon County**, 123 Idaho 657, 851 P.2d 953 (1993).

Exhaustion of Remedies.

Exhaustion of remedies under §§ 67-6501 to 67-6529, prior to challenging validity of ordinance, is required in a zoning matter. **County of Ada v. Henry**, 105 Idaho 263, 668 P.2d 994 (1983).

Implied Variance of Zoning Laws.

Imposition of an implied variance of zoning laws by the court, on appeal from denial of beer and wine license because of violations of zoning laws, was contrary to both the ordinances of the county planning and zoning scheme and this chapter. *Hubbard v. Canyon County Comm'rs*, 106 Idaho 436, 680 P.2d 537 (1984).

Jurisdiction.

The determination of whether or not an applicant for a special use permit is entitled to receive that permit is a factual determination which, in the first instance, must be brought before the local planning and zoning authorities pursuant to this chapter; original jurisdiction to decide such issues does not rest in the district court. *Jerome County ex rel. Bd. of Comm'rs v. Holloway*, 118 Idaho 681, 799 P.2d 969 (1990).

Trial court properly dismissed a suit brought by a neighbor claiming that the issuance of a livestock confinement operation (LCO) permit without notice or a public hearing was flawed where, according to the county's zoning ordinance, a sub-threshold livestock confinement operation (LCO) permit could be approved by the county zoning administrator and neither the applicable provisions of this chapter, nor the zoning ordinance required a notice and hearing before the commission for sub-threshold LCO permits. *Chisholm v. Twin Falls County (In re Twin Falls County Comm'rs Resolution No. 2001-4)*, 139 Idaho 131, 75 P.3d 185 (2003).

County zoning board is treated as an administrative agency for purposes of judicial review. *Chisholm v. Twin Falls County (In re Twin Falls County Comm'rs Resolution No. 2001-4)*, 139 Idaho 131, 75 P.3d 185 (2003).

District court's summary judgment, voiding approval of a conditional use permit to develop a gravel mine and asphalt plant that was granted by the planning and development council, was reversed, as the board of county commissioners was the designated decision-making body for appeals of decisions of the planning and development council, and the district court should have applied the doctrine of exhaustion to dismiss the landowner's complaint. *White v. Bannock County Comm'rs*, 139 Idaho 396, 80 P.3d 332 (2003).

Purpose.

In enacting this chapter, the legislature intended to give local governing boards broad powers in the area of planning and zoning. *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

Standards for Street Naming and Numbering.

Since the purposes of this chapter and the duties of those charged with its administration are closely related to the planning and zoning functions that have long been the domain of cities and counties, since of necessity these functions transcend the boundaries of local special purpose districts, since former § 40-501 was amended to add to the duties of the county commissioners the duty to rename streets and highways within the county by proper ordinance, since §§ 50-1301 to 50-1329 governing the filing of subdivision plats provide that all plats must be presented to the proper governing body of a city and/or county for approval and each plat must show all the streets and have them named, since nothing in this chapter suggests a legislative intent for the planning and standard setting of this chapter in respect to highways to flow to highway districts by reason of the language of former § 40-1611 and since this chapter was enacted after former §§ 40-1611 and 40-1615, this chapter gives a county the authority to set standards for street naming and address numbering within the boundaries of a local highway district. *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

Cited *Walker-Schmidt Ranch v. Blaine County*, 101 Idaho 420, 614 P.2d 960 (1980); *State ex rel. Roark v. City of Hailey*, 102 Idaho 511, 633 P.2d 576 (1981); *Drake v. Craven*, 105 Idaho 734, 672 P.2d 1064 (Ct. App. 1983); *Ferguson v. Board of County Comm'rs*, 110 Idaho 785, 718 P.2d 1223 (1986); *Robbins v. County of Blaine*, 134 Idaho 113, 996 P.2d 813 (2000); *Evans v. Bd. of Comm'rs*, 137 Idaho 428, 50 P.3d 443 (2002); *County Residents Against Pollution from Septage Sludge v. Bonner County*, 138 Idaho 585, 67 P.3d 64 (2003).

OPINIONS OF ATTORNEY GENERAL

State vs. Local.

A state agency must comply with valid county ordinances enacted pursuant to this chapter, unless a statutory or constitutional provision

provides an express exemption for the agency or impliedly preempts the application of the ordinance. OAG 92-5.

In enacting this chapter, it was the legislature's intent that local governments must take steps to minimize conflicts between local zoning ordinances and the land use plans of state agencies, as shown by the provisions of § 67-6528. OAG 92-5.

§ 67-6502. Purpose. — The purpose of this act shall be to promote the health, safety and general welfare of the people of the state of Idaho as follows:

(a) To protect property rights while making accommodations for other necessary types of development such as low-cost housing and mobile home parks.

(b) To ensure that adequate public facilities and services are provided to the people at reasonable cost.

(c) To ensure that the economy of the state and localities is protected.

(d) To ensure that the important environmental features of the state and localities are protected.

(e) To encourage the protection of prime agricultural, forestry and mining lands and land uses for production of food, fiber and minerals, as well as the economic benefits they provide to the community.

(f) To encourage urban and urban-type development within incorporated cities.

(g) To avoid undue concentration of population and overcrowding of land.

(h) To ensure that the development on land is commensurate with the physical characteristics of the land.

(i) To protect life and property in areas subject to natural hazards and disasters.

(j) To protect fish, wildlife and recreation resources.

(k) To avoid undue water and air pollution.

(l) To allow local school districts to participate in the community planning and development process so as to address public school needs and impacts on an ongoing basis.

(m) To protect public airports as essential community facilities that provide safe transportation alternatives and contribute to the economy of

the state.

History.

I.C., § 67-6502, as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 1, p. 830; am. 1994, ch. 245, § 1, p. 764; am. 1999, ch. 396, § 2, p. 1099; am. 2011, ch. 89, § 1, p. 192; am. 2014, ch. 93, § 3, p. 254.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 89, in subsection (e), inserted “and land uses” and “as well as the economic benefits they provide to the community.”

The 2014 amendment, by ch. 93, added subsection (m).

Compiler’s Notes.

The term “this act” in the introductory paragraph refers to S.L. 1975, Chapter 188, which is compiled as §§ 67-6501 to 67-6509, 67-6511, 67-6512 to 67-6515, and 67-6516 to 67-6529.

CASE NOTES

Agency.

Agricultural land.

Conditional rezone.

Agency.

A county board of commissioners does not fall within the definition of an “agency” for purposes of applying the Idaho administrative procedure act. **Burns Holdings, LLC v. Madison County Bd.**, 147 Idaho 660, 214 P.3d 646 (2009).

Agricultural Land.

When § 67-6529 is read in the context of the other sections of this chapter, and in light of the purposes and objectives set forth in this section, it is clear that the legislature did not intend to give agricultural land

allegedly being used for agricultural purposes a carte blanche exemption from all county zoning ordinances. [Olson v. Ada County, 105 Idaho 18, 665 P.2d 717 \(1983\)](#).

Section 67-6529, exempting agricultural land, must be construed harmoniously with other provisions of this chapter to the extent reasonably possible and must also be construed to give effect to the legislative intent and purpose in enacting this chapter. [Olson v. Ada County, 105 Idaho 18, 665 P.2d 717 \(1983\)](#).

Conditional Rezone.

Plaintiffs' argued that the board of county commissioner's approval of a conditional rezoning frustrated the purposes listed under subsections (f) and (g); however plaintiffs did not provide support to show how the rezoning discouraged urban and urban-type development within incorporated cities, or how it failed to promote the avoidance of undue concentration of population and overcrowding of land, and, thus, failed to show how the board erred under the terms of § 67-5279. [Taylor v. Canyon County Bd. of Comm'rs, 147 Idaho 424, 210 P.3d 532 \(2009\)](#).

Cited [City of Lewiston v. Knieriem, 107 Idaho 80, 685 P.2d 821 \(1984\)](#); [Ciszek v. Kootenai County Bd. of Comm'rs, 151 Idaho 123, 254 P.3d 24 \(2011\)](#).

OPINIONS OF ATTORNEY GENERAL

County Regulations.

Although authorized generally to establish zoning ordinances under this chapter, a county is preempted from regulating lake encroachments by the lake protection act, § 58-1301 et seq. OAG 83-6.

State Regulations.

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of

operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

§ 67-6503. Participation of local governments. — Every city and county shall exercise the powers conferred by this chapter.

History.

I.C., § 67-6503, as added by 1975, ch. 188, § 2, p. 515.

CASE NOTES

Mandatory.

Exercise of the authority to zone and plan, whether by governing board or by the established commissions, is made mandatory by this section. *Gumprecht v. City of Coeur d'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

§ 67-6504. Planning and zoning commission — Creation — Membership — Organization — Rules — Records — Expenditures — Staff. — A city council or board of county commissioners, hereafter referred to as a governing board, may exercise all of the powers required and authorized by this chapter in accordance with this chapter. If a governing board chooses to exercise the powers required and authorized by this chapter it need not follow the procedural requirements established hereby solely for planning and zoning commissions. If a governing board does not elect to exercise the powers conferred by this chapter, it shall establish by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, a planning commission and a zoning commission or a planning and zoning commission acting in both capacities, which may act with the full authority of the governing board, excluding the authority to adopt ordinances or to finally approve land subdivisions. The powers of the board of county commissioners conferred by this chapter shall apply to the unincorporated area of the county. Legally authorized planning, zoning, or planning and zoning commissions existing prior to enactment of this chapter shall be considered to be duly constituted under this chapter. Within this chapter use of the term “planning and zoning commission” shall include the term “planning commission,” “zoning commission” and “planning and zoning commission.”

(a) Membership — Each commission shall consist of not less than three (3) nor more than twelve (12) voting members, all appointed by a mayor or chairman of the county board of commissioners and confirmed by majority vote of the governing board. An appointed member of a commission must have resided in the county for at least two (2) years prior to his appointment, and must remain a resident of the county during his service on the commission.

(1) Not more than one-third (1/3) of the members of any commission appointed by the chairman of the board of county commissioners may reside within an incorporated city of one thousand five hundred (1,500) or more population in the county; provided however, that any appointment from within an incorporated city with a population of one

thousand five hundred (1,500) or more must occur on a rotating basis between all the incorporated cities with a population of one thousand five hundred (1,500) or more within the county.

(2) At least one-half (1/2) of the members of any commission appointed by the chairman of the board of county commissioners must reside outside the boundaries of any city's area of impact; provided however, if the requirements of this paragraph cannot be met the following may occur: if a vacancy occurs for a commission member residing outside the boundaries of any city's area of impact, after public notice of such vacancy on the commission and solicitation of applicants to fill the position from outside the boundaries of any city's area of impact, and if the governing board is unable to obtain applicants outside the boundaries of any city's area of impact, then the governing board may appoint from within a city's area of impact; provided however, that any appointment occurring within a city's area of impact must occur on a rotating basis between all the cities' areas of impact in the county.

(3) The ordinance establishing a commission to exercise the powers under this chapter shall set forth the number of members to be appointed. The term of office for members shall be not less than three (3) years, nor more than six (6) years, and the length of term shall be prescribed by ordinance. No person shall serve more than two (2) full consecutive terms without specific concurrence by two-thirds (2/3) of the governing board adopted by motion and recorded in the minutes. Vacancies occurring otherwise than through the expiration of terms shall be filled in the same manner as the original appointment. Members may be removed for cause by a majority vote of the governing board. Members shall be selected without respect to political affiliation and may receive such mileage and per diem compensation as provided by the governing board. If a governing board exercises these powers, its members shall be entitled to no additional mileage or per diem compensation.

(b) Organization — Each commission shall elect a chairman and create and fill any other office that it may deem necessary. A commission may establish subcommittees, advisory committees or neighborhood groups to advise and assist in carrying out the responsibilities under this chapter. A commission may appoint nonvoting ex officio advisors as may be deemed necessary.

(c) Rules, Records, and Meetings — Written organization papers or bylaws consistent with this chapter and other laws of the state for the transaction of business of the commission shall be adopted. A record of meetings, hearings, resolutions, studies, findings, permits and actions taken shall be maintained. All meetings and records shall be open to the public. At least one (1) regular meeting shall be held each month for not less than nine (9) months in a year. A majority of currently appointed voting members of the commission shall constitute a quorum.

(d) Expenditures and Staff — With approval of a governing board through the legally required budgetary process, the commission may receive and expend funds, goods, and services from the federal government or agencies and instrumentalities of state or local governments or from civic and private sources and may contract with these entities and provide information and reports as necessary to secure aid. Expenditures by a commission shall be within the amounts appropriated by a governing board. Within such limits, any commission is authorized to hire or contract with employees and technical advisors, including, but not limited to, planners, engineers, architects and legal assistants.

History.

I.C., § 67-6504, as added by 1975, ch. 188, § 2, p. 515; am. 1982, ch. 130, § 1, p. 372; am. 1992, ch. 96, § 1, p. 310; am. 1995, ch. 181, § 3, p. 664; am. 1999, ch. 396, § 3, p. 1099; am. 2003, ch. 84, § 1, p. 259; am. 2015, ch. 205, § 1, p. 632.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 205, in subsection (a), added the paragraph designations to existing provisions, added “provided however, that any appointment from within an incorporated city with a population of one thousand five hundred (1,500) or more must occur on a rotating basis between all the incorporated cities with a population of one thousand five hundred (1,500) or more within the county” to the end of paragraph (1) and added “provided however, if the requirements of this paragraph cannot be met the following may occur: if a vacancy occurs for a commission member residing outside the boundaries of any city’s area of impact, after public

notice of such vacancy on the commission and solicitation of applicants to fill the position from outside the boundaries of any city's area of impact, and if the governing board is unable to obtain applicants outside the boundaries of any city's area of impact, then the governing board may appoint from within a city's area of impact; provided however, that any appointment occurring within a city's area of impact must occur on a rotating basis between all the cities' areas of impact in the county" to the end of paragraph (2).

Compiler's Notes.

The phrase "prior to enactment of this chapter" in the next-to-last sentence in the first paragraph refers to the time period prior to the enactment of S.L. 1975, Chapter 188, which was effective July 1, 1975.

CASE NOTES

Board's authority.

Initiative legislation invalid.

Residency requirement.

Review.

Review of commission decision.

Unauthorized delegation of authority.

Board's Authority.

Boards of county commissioners are vested with the exclusive, non-delegable, authority to finally approve or deny subdivision applications and, thus, may make decisions counter to the initial recommendations of the planning and zoning commissioners. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Initiative Legislation Invalid.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by

electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. *Gumprecht v. City of Coeur d'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

Residency Requirement.

The five-year [now 2-year] residency requirement of this section for appointment to the planning and zoning board is not an unreasonable or irrational means to effectuate the state interest of insuring that the potential appointee has been exposed to the issues and problems of planning and zoning and to afford the governing board an opportunity to gain first-hand knowledge about his or her character and expertise; therefore, the residency requirement does not violate the equal protection rights of a potential appointee. *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982).

The five-year [now 2-year] residency requirement of this section is rationally related to the requirement under § 67-6508 that the planning commission in developing the comprehensive plan (concerning land use) consider the previous conditions of the area. *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982).

The five-year [now 2-year] residency requirement of this section does not violate the due process rights of a potential appointee since it neither penalizes the right to travel nor forecloses the right to seek public office. Furthermore, candidacy for an appointive position is not a fundamental right. *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982).

Review.

Opinions rendered by staff members on subdivision applications may not effectively bind a board of county commissioners, even if money is expended in reliance on those opinions, as the board has the sole, statutory authority to approve or deny a subdivision application under this section. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Review of Commission Decision.

Upholding a city council's denial of an application for a special use permit to erect a television transmission tower despite the planning and zoning commission's prior approval, the appellate court held that the council retained the right to review decisions of the commission de novo, and since it was not acting in a quasi-judicial capacity when doing so, due process was not required. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 159 P.3d 840 (2007).

Unauthorized Delegation of Authority.

Bingham County Zoning Ordinance § 17.7 was not applicable when the recommendation of a planning and zoning commission on a rezoning application was to amend the zoning ordinance. Applying Ordinance § 17.7 in a situation in which the planning and zoning commission had recommended approval of a rezoning application, but the application had been denied by the board of county commissioners on the ground that they were split on the issue, would, in essence, delegate to the planning and zoning commission the authority to amend the zoning ordinance in violation of Idaho Const., Art. XII, § 2, § 67-6511, and this section. *Brower v. Bingham County Commissioners (In re Zoning Change)*, 140 Idaho 512, 96 P.3d 613 (2004).

Cited *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007).

OPINIONS OF ATTORNEY GENERAL

Joint Authority.

In reading subsection (a) of § 67-6526 in conjunction with all of Chapter 65, and in particular this section and § 67-6505, and the remainder of § 67-6526, it is clear that the ordinance governing the area of impact must be adopted by both the city council and the board of county commissioners. Section 67-6526(a)(1) merely states that a plan drafted by a city may be applied to the area of impact. The application of the city's plan to the area of impact only occurs when ordinances adopting such plan are enacted by the city council and the board of county commissioners. Reading § 67-6526(a)(1) as giving cities the power to act unilaterally in adopting ordinances governing unincorporated areas of impact would render it unconstitutional as violating Idaho Const., Art. XII, § 2. OAG 95-1.

§ 67-6505. Joint planning and zoning commission — Formation — Duties. — The boards of county commissioners of two (2) or more adjoining counties, alone or together with the council of one (1) or more cities therein, or the board of county commissioners of a county together with the council of one (1) or more cities within the county, or the councils of two (2) or more adjoining cities, are empowered to cooperate in the establishment of a joint planning, zoning, or planning and zoning commission, hereafter referred to as a joint commission, and may provide for participation by invitation of other public agencies deemed necessary to exercise the powers conferred in this chapter. The number of members of a joint commission, the method of appointment, and the allocation of costs for activities to be borne by the participating governing boards shall be agreed upon by the governing boards and agencies involved. A joint commission is further authorized and empowered to perform any of the duties for any local member's governing board when the duties have been authorized by that member government.

History.

I.C., § 67-6505, as added by 1975, ch. 188, § 2, p. 515.

OPINIONS OF ATTORNEY GENERAL

Joint Authority.

In reading subsection (a) of § 67-6526 in conjunction with all of Chapter 65, and in particular § 67-6504 and this section, and the remainder of § 67-6526, it is clear that the ordinance governing the area of impact must be adopted by both the city council and the board of county commissioners. Section 67-6526(a)(1) merely states that a plan drafted by a city may be applied to the area of impact. The application of the city's plan to the area of impact only occurs when ordinances adopting such plan are enacted by the city council and the board of county commissioners. Reading § 67-6526(a)(1) as giving cities the power to act unilaterally in adopting ordinances governing unincorporated areas of impact would render it unconstitutional as violating Idaho Const., Art. XII, § 2. OAG 95-1.

§ 67-6506. Conflict of interest prohibited. — A governing board creating a planning, zoning, or planning and zoning commission, or joint commission shall provide that the area and interests within its jurisdiction are broadly represented on the commission. A member or employee of a governing board, commission, or joint commission shall not participate in any proceeding or action when the member or employee or his employer, business partner, business associate, or any person related to him by affinity or consanguinity within the second degree has an economic interest in the procedure or action. Any actual or potential interest in any proceeding shall be disclosed at or before any meeting at which the action is being heard or considered. For purposes of this section the term “participation” means engaging in activities which constitute deliberations pursuant to the open meeting act. No member of a governing board or a planning and zoning commission with a conflict of interest shall participate in any aspect of the decision-making process concerning a matter involving the conflict of interest. A knowing violation of this section shall be a misdemeanor.

History.

I.C., § 67-6506, as added by 1975, ch. 188, § 2, p. 515; am. 1999, ch. 396, § 4, p. 1099; am. 2006, ch. 213, § 1, p. 644.

STATUTORY NOTES

Cross References.

Open meetings law, § 74-201 et seq.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Amendments.

The 2006 amendment, by ch. 213, deleted the former second-to-last sentence, which read: “A member with a conflict of interest shall not be prohibited from testifying at, or presenting evidence to, a public hearing or similar public process after acknowledging nonparticipation in the matter due to a conflict of interest.”

CASE NOTES

Construction with other law.

No allegation of conflict.

Participation prohibited.

Purpose.

Construction With Other Law.

There was no indication that the Idaho legislature intended to repeal or amend this section when it adopted the ethics in government act of 1990, § 59-701 et seq.; thus, the definition of “conflict of interest” in the ethics in government act did not apply to this section. *Gooding County v. Wybenga*, 137 Idaho 201, 46 P.3d 18 (2002).

No Allegation of Conflict.

Where business developer had not alleged mayor had an immediate or direct economic conflict of interest in zoning proceeding, the mayor was not required to recuse himself. *Sprenger, Grubb & Assocs. v. City of Hailey*, 127 Idaho 576, 903 P.2d 741 (1995).

Participation Prohibited.

Decisions of planning and zoning commission and board of county commissioners, approving route of utility lines through the county, were illegal and without force and effect, where members of the commission and board, owning property in the county that could be economically impacted by the decisions, participated in the proceedings leading up to the decisions; even though they recuse themselves from the final votes. *Manookian v. Blaine County*, 112 Idaho 697, 735 P.2d 1008 (1987).

This section prohibits a member of a governing board or commission, who has an economic interest in the procedure or action, from participating in a zoning proceeding, and such a member is prohibited from participating even if he or she will not vote. *Sprenger, Grubb & Assocs. v. City of Hailey*, 127 Idaho 576, 903 P.2d 741 (1995).

Trial court erred in finding a county ordinance regulating confined animal feeding operations void because one commissioner with a conflict of

interest violated this section by participation in consideration of adoption of the ordinance; the taint was removed where the ordinance was adopted with amendments the next day by the two remaining commissioners in his absence. *Gooding County v. Wybenga*, 137 Idaho 201, 46 P.3d 18 (2002).

Section 67-6535 did not apply in the case of property owners who claimed that the denial of their rezoning application was not supported by substantial evidence, because the board of commissioners did not vote to approve or to deny the owners' application. This section had required a commissioner who was related to one of the owners to abstain from participating in the proceedings, but there was no provision in the law for the appointment of a substitute, and because the two remaining commissioners had been split on the issue, there was no majority vote. *Brower v. Bingham County Commissioners (In re Zoning Change)*, 140 Idaho 512, 96 P.3d 613 (2004).

Purpose.

The purpose of this section is to ensure that only impartial and objective persons make decisions affecting other persons' liberty and property. *Manookian v. Blaine County*, 112 Idaho 697, 735 P.2d 1008 (1987).

Cited *Castaneda v. Brighton Corp.*, 130 Idaho 923, 950 P.2d 1262 (1998).

RESEARCH REFERENCES

ALR. — Bias or interest of administrative officer sitting in zoning proceeding as necessitating disqualification of officer or affecting validity of zoning decision. 4 *A.L.R.6th* 263.

§ 67-6507. The planning process and related powers of the commission. — As part of the planning process, a planning or zoning commission shall provide for citizen meetings, hearings, surveys, or other methods, to obtain advice on the planning process, plan, and implementation. The commission may also conduct informational meetings and consult with public officials and agencies, public utility companies, and civic, educational, professional, or other organizations. As part of the planning process, the commission shall endeavor to promote a public interest in and understanding of the commission's activities.

The commission may, at any time, make recommendations to the governing board concerning the plan, planning process, or implementation of the plan.

With the consent of the owner, the commission and its members, officers, and employees, in the performance of their functions, may enter upon any land and make examinations and surveys and place and maintain necessary monuments and marks thereon.

The commission may perform such additional duties as may be assigned by the governing board.

The commission shall have the right to seek judicial process, as may be necessary to enable it to fulfill its functions.

History.

I.C., § 67-6507, as added by 1975, ch. 188, § 2, p. 515.

CASE NOTES

Initiative Legislation Prohibited.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city

sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. *Gumprecht v. City of Coeur d'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

Cited *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982); *Coeur d'Alene Indus. Park Property Owners Ass'n v. City of Coeur d'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985); *Lowery v. Board of County Comm'rs*, 117 Idaho 1079, 793 P.2d 1251 (1990).

§ 67-6508. Planning duties. — It shall be the duty of the planning or planning and zoning commission to conduct a comprehensive planning process designed to prepare, implement, and review and update a comprehensive plan, hereafter referred to as the plan. The plan shall include all land within the jurisdiction of the governing board. The plan shall consider previous and existing conditions, trends, compatibility of land uses, desirable goals and objectives, or desirable future situations for each planning component. The plan with maps, charts, and reports shall be based on the following components as they may apply to land use regulations and actions unless the plan specifies reasons why a particular component is unneeded.

(a) Property Rights — An analysis of provisions which may be necessary to ensure that land use policies, restrictions, conditions and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of property and analysis as prescribed under the declarations of purpose in chapter 80, title 67, Idaho Code.

(b) Population — A population analysis of past, present, and future trends in population including such characteristics as total population, age, sex, and income.

(c) School Facilities and Transportation — An analysis of public school capacity and transportation considerations associated with future development.

(d) Economic Development — An analysis of the economic base of the area including employment, industries, economies, jobs, and income levels.

(e) Land Use — An analysis of natural land types, existing land covers and uses, and the intrinsic suitability of lands for uses such as agriculture, forestry, mineral exploration and extraction, preservation, recreation, housing, commerce, industry, and public facilities. A map shall be prepared indicating suitable projected land uses for the jurisdiction.

(f) Natural Resources — An analysis of the uses of rivers and other waters, forests, range, soils, harbors, fisheries, wildlife, minerals, thermal

waters, beaches, watersheds, and shorelines.

(g) Hazardous Areas — An analysis of known hazards as may result from susceptibility to surface ruptures from faulting, ground shaking, ground failure, landslides or mudslides; avalanche hazards resulting from development in the known or probable path of snowslides and avalanches, and floodplain hazards.

(h) Public Services, Facilities, and Utilities — An analysis showing general plans for sewage, drainage, power plant sites, utility transmission corridors, water supply, fire stations and fire fighting equipment, health and welfare facilities, libraries, solid waste disposal sites, schools, public safety facilities and related services. The plan may also show locations of civic centers and public buildings.

(i) Transportation — An analysis, prepared in coordination with the local jurisdiction(s) having authority over the public highways and streets, showing the general locations and widths of a system of major traffic thoroughfares and other traffic ways, and of streets and the recommended treatment thereof. This component may also make recommendations on building line setbacks, control of access, street naming and numbering, and a proposed system of public or other transit lines and related facilities including rights-of-way, terminals, future corridors, viaducts and grade separations. The component may also include port, harbor and other related transportation facilities.

(j) Recreation — An analysis showing a system of recreation areas, including parks, parkways, trailways, river bank greenbelts, beaches, playgrounds, and other recreation areas and programs.

(k) Special Areas or Sites — An analysis of areas, sites, or structures of historical, archeological, architectural, ecological, wildlife, or scenic significance.

(l) Housing — An analysis of housing conditions and needs; plans for improvement of housing standards; and plans for the provision of safe, sanitary, and adequate housing, including the provision for low-cost conventional housing, the siting of manufactured housing and mobile homes in subdivisions and parks and on individual lots which are sufficient

to maintain a competitive market for each of those housing types and to address the needs of the community.

(m) Community Design — An analysis of needs for governing landscaping, building design, tree planting, signs, and suggested patterns and standards for community design, development, and beautification.

(n) Agriculture — An analysis of the agricultural base of the area including agricultural lands, farming activities, farming-related businesses and the role of agriculture and agricultural uses in the community.

(o) Implementation — An analysis to determine actions, programs, budgets, ordinances, or other methods including scheduling of public expenditures to provide for the timely execution of the various components of the plan.

(p) National Interest Electric Transmission Corridors — After notification by the public utilities commission concerning the likelihood of a federally designated national interest electric transmission corridor, prepare an analysis showing the existing location and possible routing of high voltage transmission lines, including national interest electric transmission corridors based upon the United States department of energy's most recent national electric transmission congestion study pursuant to sections 368 and 1221 of the energy policy act of 2005. "High-voltage transmission lines" means lines with a capacity of one hundred fifteen thousand (115,000) volts or more supported by structures of forty (40) feet or more in height.

(q) Public Airport Facilities — An analysis prepared with assistance from the Idaho transportation department division of aeronautics, if requested by the planning and zoning commission, and the manager or person in charge of the local public airport identifying, but not limited to, facility locations, the scope and type of airport operations, existing and future planned airport development and infrastructure needs, and the economic impact to the community.

Nothing herein shall preclude the consideration of additional planning components or subject matter.

History.

I.C., § 67-6508, as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 2, p. 830; am. 1994, ch. 212, § 1, p. 668; am. 1994, ch. 245, § 2, p. 764; am. 1995, ch. 181, § 4, p. 664; am. 1995, ch. 305, § 1, p. 1054; am. 1996, ch. 201, § 1, p. 622; am. 2007, ch. 186, § 2, p. 535; am. 2011, ch. 89, § 2, p. 192; am. 2014, ch. 93, § 4, p. 254.

STATUTORY NOTES

Cross References.

Public utility commission, § 61-201 et seq.

Amendments.

This section was amended by two 1995 acts which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 181, § 1, in the introductory paragraph in the last sentence added “as they may apply to land use regulations and actions” following “on the following components”; added a new subsection (a); relettered former subsections (a) — (m) as subsections (b) — (n); deleted former subsection (k) as amended by S.L. 1994, ch. 212, § 1; in present subsection (l) added “the siting of” preceding “manufactured housing” and added “and to address the needs of the community” following “each of those housing types”.

The 1995 amendment, by ch. 305, § 4, deleted former subsection (k) as added by S.L. 1994, ch. 212, § 1.

The 2007 amendment, by ch. 186, added subsection (o).

The 2011 amendment, by ch. 89, inserted “compatibility of land uses” in the third sentence of the introductory paragraph; added subsection (n); and redesignated former subsections (n) and (o) as present subsections (o) and (p), respectively.

The 2014 amendment, by ch. 93, deleted “aviation” following “harbor” in the last sentence of subsection (i) and inserted subsection (q).

Federal References.

Sections 368 and 1221 of the energy policy act of 2005, referred to in subsection (p), are codified as **42 U.S.C.S. § 15926** and **16 U.S.C.S. § 824p**,

respectively.

Compiler's Notes.

For further information on the national electric transmission congestion study, referred to in subsection (p), see <https://www.energy.gov/oe/services/electricity-policy-coordination-and-implementation/transmission-planning/national-2>.

For more on the division of aeronautics, referred to in subsection (p), see <https://itd.idaho.gov/aero>.

Section 3 of S.L. 2007, ch. 186 provides: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 4 of S.L. 2007, ch. 186 declared an emergency. Approved March 26, 2007.

CASE NOTES

Area's previous conditions.

Comprehensive plan.

Initiative legislation prohibited.

Land use map.

When supplement to record permitted.

Area's Previous Conditions.

The five-year [now 2-year] residency requirement of § 67-6504 is rationally related to the requirement under this section that the planning commission, in developing the comprehensive plan (concerning land use), consider the previous conditions of the area. [Langmeyer v. State, 104 Idaho 53, 656 P.2d 114 \(1982\)](#).

Comprehensive Plan.

This section expressly makes the adoption of a comprehensive plan a condition precedent to the validity of a zoning ordinance. *Dawson Enters., Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977).

County planning and zoning commission's decision to approve a landowner's conditional use permit using the comprehensive plan as a guide was not arbitrary or capricious, because the commission extensively reviewed the comprehensive plan, considered both the positive and negative aspects of the proposal, and determined that the proposed use was harmonious and in accordance with the comprehensive plan. *Krempasky v. Nez Perce County Planning & Zoning (In re Approval of a Conditional Use Permit #CUP-2008-3)*, 150 Idaho 231, 245 P.3d 983 (2010).

While requirements of applicable ordinances are binding on a body rendering a zoning or permit decision, a comprehensive plan is not. A comprehensive plan reflects the desirable goals and objectives, or desirable future situations, of the use of land. A comprehensive plan does not operate as legally controlling zoning law, but rather serves to guide and advise the governmental agencies responsible for making zoning decisions. *Krempasky v. Nez Perce County Planning & Zoning (In re Approval of a Conditional Use Permit #CUP-2008-3)*, 150 Idaho 231, 245 P.3d 983 (2010).

Requirement of a "general plan" under the Local Land Use Planning Act diminishes the degree of required "analysis." *Neighbors for the Pres. of the Big & Little Creek Cmty. v. Bd. of County Comm'rs*, 159 Idaho 182, 358 P.3d 67 (2015).

The county board of commissioners' decision approving a conditional rezone of land from agricultural to industrial for a nuclear power plant was proper because the utility company's comprehensive plan satisfied the "general plans" requirement as to power plant siting; although the plan provided little guidance, it would be extraordinarily difficult, if not impossible, to develop detailed plans for the many different types of power plants that could be proposed *Neighbors for the Pres. of the Big & Little Creek Cmty. v. Bd. of County Comm'rs*, 159 Idaho 182, 358 P.3d 67 (2015).

Approval of a conditional rezone of land from agricultural to industrial for a nuclear power plant was valid because the utility company's

comprehensive plan satisfied the “general plans” requirement as to power plant siting; although the comprehensive plan contained no meaningful discussion of power transmission corridors, the requirement regarding power transmission corridors as relating to high voltage power lines. *Neighbors for the Pres. of the Big & Little Creek Cmty. v. Bd. of County Comm’rs*, 159 Idaho 182, 358 P.3d 67 (2015).

Initiative Legislation Prohibited.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. *Gumprecht v. City of Coeur d’Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

Land Use Map.

A land use map is not the comprehensive plan, but only a subpart of one of the components referred to in this section which go into the making of a plan. *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984).

Because a valid comprehensive plan must contain each of the components specified in this section, unless the plan articulates a reason why a particular component is unneeded, the absence of a land use map rendered the defendant’s comprehensive plan invalid. *Sprenger, Grubb & Assocs. v. City of Hailey*, 133 Idaho 320, 986 P.2d 343 (1999).

When Supplement to Record Permitted.

In action concerning open meetings law and review of an agency action brought pursuant to the Administrative Procedures Act (APA) concerning site selection of a landfill, the district court erred in allowing county commissioners to supplement its record with findings of fact regarding compliance with local land use plan, where the parties did not make any

allegations that there was a procedural irregularity. *Petersen v. Franklin County*, 130 Idaho 176, 938 P.2d 1214 (1997).

Cited *Lowery v. Board of County Comm’rs*, 117 Idaho 1079, 793 P.2d 1251 (1990); *Taylor v. Canyon County Bd. of Comm’rs*, 147 Idaho 424, 210 P.3d 532 (2009).

Decisions Under Prior Law

Comprehensive Plan.

Under the former section governing comprehensive plans, the adoption of a separate comprehensive plan was not a “condition precedent” to the validity of a zoning ordinance. *Dawson Enters., Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977).

Where county zoning ordinances extensively defined permissible uses in each zone, there was, in essence a general comprehensive plan sufficient to meet the requirement of the former section. *Dawson Enters., Inc. v. Blaine County*, 98 Idaho 506, 567 P.2d 1257 (1977).

OPINIONS OF ATTORNEY GENERAL

State Regulations.

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

§ 67-6509. Recommendation and adoption, amendment, and repeal of the plan. — (a) The planning or planning and zoning commission, prior to recommending the plan, amendment, or repeal of the plan to the governing board, shall conduct at least one (1) public hearing in which interested persons shall have an opportunity to be heard. At least fifteen (15) days prior to the hearing, notice of the time and place and a summary of the plan to be discussed shall be published in the official newspaper or paper of general circulation within the jurisdiction. The commission shall also make available a notice to other papers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice of intent to adopt, repeal or amend the plan shall be sent to all political subdivisions providing services within the planning jurisdiction, including school districts and the manager or person in charge of the local public airport, at least fifteen (15) days prior to the public hearing scheduled by the commission. Following the commission hearing, if the commission recommends a material change to the proposed amendment to the plan which was considered at the hearing, it shall give notice of its proposed recommendation and conduct another public hearing concerning the matter if the governing board will not conduct a subsequent public hearing concerning the proposed amendment. If the governing board will conduct a subsequent public hearing, notice of the planning and zoning commission recommendation shall be included in the notice of public hearing provided by the governing board. A record of the hearings, findings made, and actions taken by the commission shall be maintained by the city or county.

(b) The governing board, as provided by local ordinance, prior to adoption, amendment, or repeal of the plan, may conduct at least one (1) public hearing, in addition to the public hearing(s) conducted by the commission, using the same notice and hearing procedures as the commission. The governing board shall not hold a public hearing, give notice of a proposed hearing, nor take action upon the plan, amendments, or repeal until recommendations have been received from the commission. Following consideration by the governing board, if the governing board makes a material change in the recommendation or alternative options contained in the recommendation by the commission concerning adoption,

amendment or repeal of a plan, further notice and hearing shall be provided before the governing board adopts, amends or repeals the plan.

(c) No plan shall be effective unless adopted by resolution by the governing board. A resolution enacting or amending a plan or part of a plan may be adopted, amended, or repealed by definitive reference to the specific plan document. A copy of the adopted or amended plan shall accompany each adopting resolution and shall be kept on file with the city clerk or county clerk.

(d) Any person may petition the commission or, in absence of a commission, the governing board, for a plan amendment at any time, unless the governing board has established by resolution a minimum interval between consideration of requests to amend, which interval shall not exceed six (6) months. The commission may recommend amendments to the comprehensive plan and to other ordinances authorized by this chapter to the governing board at any time.

History.

I.C., § 67-6509, as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 3, p. 830; am. 1999, ch. 396, § 5, p. 1099; am. 2010, ch. 253, § 1, p. 643; am. 2014, ch. 93, § 5, p. 254.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 253, in subsection (d), in the first sentence, added “unless the governing board has established by resolution a minimum interval between consideration of requests to amend, which interval shall not exceed”, deleted the former second sentence, which read: “The commission may recommend amendments to the land use map component of the comprehensive plan to the governing board not more frequently than once every six months”, and in the last sentence, deleted “the text of” preceding “the comprehensive plan.”

The 2014 amendment, by ch. 93, inserted “and the manager or person in charge of the local public airport” in the fourth sentence of subsection (a).

Compiler’s Notes.

The “s” enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Initiative legislation prohibited.

Notice and hearing requirements.

Procedure.

Initiative Legislation Prohibited.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. *Gumprecht v. City of Coeur d’Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

Notice and Hearing Requirements.

Adequate notice is statutorily mandated when zoning authorities are requested to change the authorized use for a particular parcel of property, and where city’s zoning ordinance required the submission of a concept plan and a narrative statement, they were to have been submitted with the application as it is not sufficient that they be provided at some later date, such as the date of the public hearing itself. *Johnson v. City of Homedale*, 118 Idaho 285, 796 P.2d 162 (Ct. App. 1990).

When a statute requires notice and hearing as to the possible effect of a zoning law upon property rights, the action of the legislative body becomes quasi-judicial in character, and the statutory notice and hearing then becomes necessary in order to satisfy the requirements of due process and may not be dispensed with. *Jerome County ex rel. Bd. of Comm’rs v. Holloway*, 118 Idaho 681, 799 P.2d 969 (1990).

It is a well settled principle that notice and hearing requirements in zoning enabling acts are conditions precedent to the proper exercise of the zoning authority. *Jerome County ex rel. Bd. of Comm'rs v. Holloway*, 118 Idaho 681, 799 P.2d 969 (1990).

In considering a rezoning request, the board of county commissioners was guilty of unlawful procedure in failing to hold a second public hearing before it adopted an amendment to the comprehensive plan which constituted a material change. *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 958 P.2d 583 (1998).

Plaintiff did not have standing to challenge the agency's failure to comply with the statutory procedures for conducting open public meetings under this section and § 67-2342, where the plaintiff did not present any evidence that any of its members are abutting or otherwise affected real property owners and no evidence of a peculiarized harm. *Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 993 P.2d 596 (1999).

Procedure.

Board of county commissioners acted within its authority under §§ 67-6511 and 67-6535(3) and Idaho Const., Art. XII, § 2 and this section, when it considered two zoning changes pursuant to a single application; and there was no violation of procedural due process because the objectors had sufficient opportunity to express their views. *Ciszek v. Kootenai County Bd. of Comm'rs*, 151 Idaho 123, 254 P.3d 24 (2011).

Cited *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982); *McDonnell v. Board of County Comm'rs*, 116 Idaho 824, 780 P.2d 146 (1989); *Lowery v. Board of County Comm'rs*, 117 Idaho 1079, 793 P.2d 1251 (1990); *Canal/Norcrest/Columbus Action Comm. v. City of Boise*, 137 Idaho 377, 48 P.3d 1266 (2002); *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

§ 67-6509A. Siting of manufactured homes in residential areas — Plan to be amended. — (1) By resolution or ordinance adopted, amended or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, each governing board shall amend its comprehensive plan and land use regulations for all land zoned for single-family residential uses, except for lands falling within an area defined as a historic district under section 67-4607, Idaho Code, to allow for siting of manufactured homes as defined in section 39-4105, Idaho Code.

(2) Manufactured homes on individual lots zoned for single-family residential uses as provided in subsection (1) of this section shall be in addition to manufactured homes on lots within designated mobile home parks or manufactured home subdivisions.

(3) This section shall not be construed as abrogating a recorded restrictive covenant.

(4) A governing board may adopt any or all of the following placement standards, or any less restrictive standards, for the approval of manufactured homes located outside mobile home parks:

(a) The manufactured home shall be multisectional and enclose a space of not less than one thousand (1,000) square feet;

(b) The manufactured home shall be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the home is located not more than twelve (12) inches above grade, except when placed on a basement foundation;

(c) The manufactured home shall have a pitched roof, except that no standards shall require a slope of greater than a nominal three (3) feet in height for each twelve (12) feet in width;

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority;

(e) The manufactured home shall have a garage or carport constructed of like materials if zoning ordinances would require a newly constructed nonmanufactured home to have a garage or carport;

(f) In addition to the provisions of paragraphs (a) through (e) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirements to which a conventional single-family residential dwelling on the same lot would be subjected.

(5) Any approval standards, special conditions and the procedures for approval adopted by a local government shall be clear and objective and shall not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

History.

I.C., § 67-6509A, as added by 1994, ch. 212, § 2, p. 668; am. 1995, ch. 305, § 2, p. 1054; am. 1999, ch. 396, § 6, p. 1099; am. 2001, ch. 102, § 1, p. 252; am. 2002, ch. 345, § 36, p. 963; am. 2007, ch. 56, § 1, p. 138.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 56, added the exception in subsection (4) (b).

Effective Dates.

Section 2 of S.L. 2001, ch. 102 declared an emergency. Approved March 22, 2001.

§ 67-6509B. Manufactured housing community — Equal treatment required. — A city or a county shall not adopt or enforce zoning, community development or subdivision ordinance provisions which disallow the plans and specifications of a manufactured housing community solely because the housing within the community will be manufactured housing. Applications for development of manufactured home communities shall be treated the same as those for site-built homes. For purposes of this section, “manufactured housing community” means any site, lot or tract of land upon which ten (10) or more manufactured homes may be sited. The manufactured housing community may feature either fee simple land sales or land leased or rented by the homeowner.

History.

I.C., § 67-6509B, as added by 1998, ch. 84, § 1, p. 293; am. 1999, ch. 396, § 7, p. 1099.

§ 67-6510. Mediation — Time limitations tolled. — (1) The procedure established for the processing of applications by this chapter or by local ordinance shall include the option of mediation upon the written request of the applicant, an affected person, the zoning or planning and zoning commission or the governing board. Mediation may occur at any point during the decision-making process or after a final decision has been made. If mediation occurs after a final decision, any resolution of differences through mediation must be the subject of another public hearing before the decision-making body.

(2) The applicant and any other affected persons objecting to the application shall participate in at least one (1) mediation session if mediation is requested by the commission or the governing board. The governing board shall select and pay the expense of the mediator for the first meeting among the interested parties. Compensation of the mediator shall be determined among the parties at the outset of any mediation undertaking. An applicant may decline to participate in mediation requested by an affected person, and an affected person may decline to participate in mediation requested by the applicant, except that the parties shall participate in at least one (1) mediation session if directed to do so by the governing board.

(3) During mediation, any time limitation relevant to the application shall be tolled. Such tolling shall cease when the applicant or any other affected person, after having participated in at least one (1) mediation session, states in writing that no further participation is desired and notifies the other parties, or upon notice of a request to mediate wherein no mediation session is scheduled for twenty-eight (28) days from the date of such request.

(4) The mediation process may be undertaken pursuant to the general limitations established by this section or pursuant to local ordinance provisions not in conflict herewith.

(5) The mediation process shall not be part of the official record regarding the application.

History.

I.C., § 67-6510, as added by 2000, ch. 199, § 2, p. 490.

STATUTORY NOTES

Prior Laws.

Former § 67-6510, which comprised of I.C., § 67-6510, as added by 1975, ch. 188, § 2, p. 515, was repealed by S.L. 2000, ch. 199, § 1, effective July 1, 2000.

CASE NOTES

Cited Dry Creek Partners, LLC v. Ada County Comm'rs Ex Rel. State, 148 Idaho 11, 217 P.3d 1282 (2009).

§ 67-6511. Zoning ordinance. — (1) Each governing board shall, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, establish within its jurisdiction one (1) or more zones or zoning districts where appropriate. The zoning districts shall be in accordance with the policies set forth in the adopted comprehensive plan.

(a) Within a zoning district, the governing board shall where appropriate establish standards to regulate and restrict the height, number of stories, size, construction, reconstruction, alteration, repair or use of buildings and structures; percentage of lot occupancy, size of courts, yards, and open spaces; density of population; and the location and use of buildings and structures. All standards shall be uniform for each class or kind of buildings throughout each district, but the standards in one (1) district may differ from those in another district.

(b) Within an overlay zoning district, the governing board shall establish clear and objective standards for the overlay zoning district while ensuring that application of such standards does not constitute a regulatory taking pursuant to Idaho or federal law.

(2) Ordinances establishing zoning districts shall be amended as follows:

(a) Requests for an amendment to the zoning ordinance shall be submitted to the zoning or planning and zoning commission which shall evaluate the request to determine the extent and nature of the amendment requested. Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction. An amendment of a zoning ordinance applicable to an owner's lands or approval of conditional rezoning or denial of a request for rezoning may be subject to the regulatory taking analysis provided for by [section 67-8003, Idaho Code](#), consistent with the requirements established thereby.

(b) After considering the comprehensive plan and other evidence gathered through the public hearing process, the zoning or planning and zoning commission may recommend and the governing board may adopt or reject an ordinance amendment pursuant to the notice and hearing

procedures provided in [section 67-6509, Idaho Code](#), provided that in the case of a zoning district boundary change, and notwithstanding jurisdictional boundaries, additional notice shall be provided by mail to property owners or purchasers of record within the land being considered, and within three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be impacted by the proposed change as determined by the commission. Notice shall also be posted on the premises not less than one (1) week prior to the hearing. When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of posted or mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board subject to applicable procedures.

(c) The governing board shall analyze proposed changes to zoning ordinances to ensure that they are not in conflict with the policies of the adopted comprehensive plan. If the request is found by the governing board to be in conflict with the adopted plan, or would result in demonstrable adverse impacts upon the delivery of services by any political subdivision providing public services, including school districts, within the planning jurisdiction, the governing board may require the request to be submitted to the planning or planning and zoning commission or, in absence of a commission, the governing board may consider an amendment to the comprehensive plan pursuant to the notice and hearing procedures provided in [section 67-6509, Idaho Code](#). After the plan has been amended, the zoning ordinance may then be considered for amendment pursuant to paragraph (b) of this subsection.

(d) If a governing board adopts a zoning classification pursuant to a request by a property owner based upon a valid, existing comprehensive plan and zoning ordinance, the governing board shall not subsequently reverse its action or otherwise change the zoning classification of said property without the consent in writing of the current property owner for a period of four (4) years from the date the governing board adopted said individual property owner's request for a zoning classification change. If the governing body does reverse its action or otherwise change the zoning classification of said property during the above four (4) year period without the current property owner's consent in writing, the current property owner shall have standing in a court of competent jurisdiction to enforce the provisions of this section.

History.

I.C., § 67-6511, as added by 1975, ch. 188, § 2, p. 515; am. 1983, ch. 121, § 1, p. 314; am. 1985, ch. 141, § 1, p. 384; am. 1987, ch. 329, § 1, p. 688; am. 1992, ch. 269, § 4, p. 830; am. 1999, ch. 396, § 8, p. 1099; am. 2003, ch. 142, § 1, p. 410; am. 2011, ch. 89, § 3, p. 192; am. 2013, ch. 216, § 1, p. 507.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 89, added the first sentence in subsection (c).

The 2013 amendment, by ch. 216, added the subsection and paragraph designations; inserted paragraph (1)(b); and substituted “paragraph (b) of this subsection” for “[section 67-6511\(b\), Idaho Code](#)” at the end of paragraph (2)(c).

Effective Dates.

Section 2 of S.L. 1983, ch. 121 declared an emergency. Approved April 1, 1983.

CASE NOTES

[Amendment.](#)

Annexation requirements.

Comprehensive plan.

Conflict with city plan.

Conforming zoning ordinances to plan.

Duty of governing body.

Indispensable parties.

Initiative legislation prohibited.

Naming and numbering of streets.

Procedure.

Reversal of zoning decision.

Review.

Spot zoning.

Uniformity.

Zoning restrictions.

Amendment.

The enactment of a comprehensive plan is a precondition to the validity of zoning ordinances; it follows a fortiori that an amendment to a zoning ordinance must also be in accordance with the adopted plan. *Love v. Board of County Comm'rs*, 105 Idaho 558, 671 P.2d 471 (1983).

Where the findings of fact were insufficient to support the conclusion that zoning amendment was in accordance with the county comprehensive plan, the district court's decision reversing the decision of the county commission was appropriate because of the commission's failure to make written findings in support of its conclusions and, the case was remanded to the county commissioners for further proceedings. *Love v. Board of County Comm'rs*, 105 Idaho 558, 671 P.2d 471 (1983).

Annexation Requirements.

By specifically prescribing the hearing and notice requirements to be followed in the annexation and zoning of newly incorporated areas, the

legislature has clearly expressed its intention that the notice and hearing provisions of this section for zoning district boundary changes are inapplicable to annexation proceedings. *City of Lewiston v. Bergamo*, 119 Idaho 221, 804 P.2d 1352 (Ct. App. 1990).

Comprehensive Plan.

A land use map is not the comprehensive plan, but only a subpart of one of the components referred to in § 67-6508 which go into the making of a plan. *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984).

Where the effect of the rezoning ordinance was to limit retail and entertainment uses in an outlying area, effect was consistent with encouraging such uses around the central core and council's conclusion that the "downzoning" of the 12.6 acres to limited business was consistent with city's comprehensive plan was not clearly erroneous. *Sprenger, Grubb & Assocs. v. City of Hailey*, 127 Idaho 576, 903 P.2d 741 (1995).

Board of commissioners did not this section by ignoring the county's comprehensive plan when it granted a zone change from A-2.5 to R-1, as the board's finding that the zone change was "in accord with" the comprehensive plan was supported by substantial, competent evidence. *Evans v. Teton County*, 139 Idaho 71, 73 P.3d 84 (2003).

Conflict with City Plan.

A city zoning and annexation ordinance, which established a 12-acre business zone adjacent to an area zoned commercial by the county and one-quarter mile from the main business zoning sector of the city, does not conflict with the city comprehensive plan as prohibited by this section, even where the plan is general and contains some undefined terms, since the proposed zone was close enough to existing business zoning. *State ex rel. Roark v. City of Hailey*, 102 Idaho 511, 633 P.2d 576 (1981).

This section does not require a zoning ordinance's land use designation to be in strict conformance with the corresponding land use designation of the comprehensive plan; the determination of whether a zoning ordinance is "in accordance with" the comprehensive plan is one of fact for the governing body charged with zoning. *Balser v. Kootenai County Bd. of Comm'rs*, 110 Idaho 37, 714 P.2d 6 (1986).

Where the applicant's property was the only property in the area which had not been rezoned, the board of county commissioner's decision to rezone the property as commercial, even though it was contrary to the existing comprehensive plan, was supported by substantial evidence and was not clearly erroneous. *Ferguson v. Board of County Comm'rs*, 110 Idaho 785, 718 P.2d 1223 (1986).

Conforming Zoning Ordinances to Plan.

The trial court erred as a matter of law in holding that the process of conforming zoning ordinances to the comprehensive plan is a purely ministerial duty; in fact, that determination is committed to the sound discretion of the governing body, subject only to judicial review on the record. *Balser v. Kootenai County Bd. of Comm'rs*, 110 Idaho 37, 714 P.2d 6 (1986).

Duty of Governing Body.

A governing body charged to zone "in accordance with" under this section must make a factual inquiry into whether the requested zoning ordinance or amendment reflects the goals of, and takes into account those factors in the comprehensive plan in light of the present factual circumstances surrounding the request; it does not require that governing bodies, as a matter of law, zone their land as it appears on their land use maps nor does it mean that such bodies can ignore their comprehensive plans when adopting or amending zoning ordinances. *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984); *Love v. Board of County Comm'rs*, 108 Idaho 728, 701 P.2d 1293 (1985).

The governing body charged with zoning must make a factual inquiry to determine whether the requested rezone reflects the goals of, and takes into account those factors in, the comprehensive plan in light of the present factual situation surrounding the request. *Ferguson v. Board of County Comm'rs*, 110 Idaho 785, 718 P.2d 1223 (1986).

In considering a rezoning request, the board of county commissioners was guilty of unlawful procedure in failing to deliberate first on the proposed amendment to the comprehensive plan and, after that determination was made, deciding the appropriateness of a rezone within

that area. *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 958 P.2d 583 (1998).

Bingham County Zoning Ordinance § 17.7 was not applicable when the recommendation of a planning and zoning commission on a rezoning application was to amend the zoning ordinance. Applying Ordinance § 17.7 in a situation in which the planning and zoning commission had recommended approval of a rezoning application, but the application had been denied by the board of county commissioners on the ground that they were split on the issue, would, in essence, delegate to the planning and zoning commission the authority to amend the zoning ordinance in violation of Idaho Const., Art. XII, § 2 and § 67-6504 and this section. *Brower v. Bingham County Commissioners (In re Zoning Change)*, 140 Idaho 512, 96 P.3d 613 (2004).

Indispensable Parties.

Landowner, who challenged the validity of a zoning ordinance amendment which downsized use of his land from heavy industrial to rural residential, was not required to name landowners within 300 feet of his property as indispensable parties. *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993).

Initiative Legislation Prohibited.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. *Gumprecht v. City of Coeur d'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

Naming and Numbering of Streets.

Since the purposes of this chapter and the duties of those charged with its administration are closely related to the planning and zoning functions that have long been the domain of cities and counties, since of necessity these functions transcend the boundaries of local special purpose districts, since former § 40-501 was amended to add to the duties of the county commissioners the duty to rename streets and highways within the county by proper ordinance, since §§ 50-1301 to 50-1329 governing the filing of subdivision plats provide that all plats must be presented to the proper governing body of a city and/or county for approval and each plat must show all the streets and have them named, since nothing in this chapter suggests a legislative intent for the planning and standard setting of this chapter in respect to highways to flow to highway districts by reason of the language of former § 40-1611 and since this chapter was enacted after former §§ 40-1611 and 40-1615, this chapter gives a county the authority to set standards for street naming and address numbering within the boundaries of a local highway district. *Worley Hwy. Dist. v. Kootenai County*, 104 Idaho 833, 663 P.2d 1135 (Ct. App. 1983).

Procedure.

Board of county commissioners acted within its authority under §§ 67-6509 and 67-6535(3) and Idaho *Const., Art. XII, § 2* and this section, when it considered two zoning changes pursuant to a single application; and there was no violation of procedural due process because the objectors had sufficient opportunity to express their views. *Ciszek v. Kootenai County Bd. of Comm'rs*, 151 Idaho 123, 254 P.3d 24 (2011).

Reversal of Zoning Decision.

A district court may only reverse a zoning decision if one of six grounds set forth in § 67-5215 (now repealed) is found to exist. *Love v. Board of County Comm'rs*, 108 Idaho 728, 701 P.2d 1293 (1985) (See § 67-5279).

Review.

A landowner's action seeking a declaratory judgment interpreting this section and a writ of mandamus requiring a city to accept his interpretation of the statute is in reality an appeal of a city's zoning decision and should be reviewed only under the guidelines set forth in former § 67-5215 (now

repealed). *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984) (See § 67-5279).

The district court applied an incorrect standard of review when it held, as a matter of law, that a zoning amendment must conform exactly to the existing comprehensive plan. *Ferguson v. Board of County Comm'rs*, 110 Idaho 785, 718 P.2d 1223 (1986).

Record on review demonstrated that the a board of county of commissioners followed the criteria set out in this section, and there was adequate evidence to support its decision to grant conditional rezoning to a property owner. *Taylor v. Canyon County Bd. of Comm'rs*, 147 Idaho 424, 210 P.3d 532 (2009).

Spot Zoning.

Where there was sufficient testimony about growth in the relevant area and the appropriateness of expanding the residential area, determination of the board of county commissioners granting a request to rezone property from agricultural to residential did not constitute spot zoning. *Price v. Payette County Bd. of County Comm'rs*, 131 Idaho 426, 958 P.2d 583 (1998).

Uniformity.

A city TDR ordinance, designed to permit purchasers to construct buildings taller than would otherwise be permitted in the city, conflicts with the uniformity requirement of this section and is invalid under Idaho Const., Art. XII, § 2. *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 236 P.3d 1284 (2010).

Zoning Restrictions.

Aesthetic concerns, including the preservation of open space and the maintenance of the rural character of a county, are valid rationales for a county to enact zoning restrictions under its police power. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Cited *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982); *McDonnell v. Board of County Comm'rs*, 116 Idaho 824, 780 P.2d 146 (1989); *Taylor v. Board of County Comm'rs*, 124 Idaho 392, 860 P.2d 8 (Ct.

App. 1993); *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

OPINIONS OF ATTORNEY GENERAL

State Regulations.

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

RESEARCH REFERENCES

A.L.R. — Propriety of federal court's abstention, under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 756, 27 L. Ed. 2d 669 (1971), to avoid interference in ongoing state proceedings involving land use and zoning. 55 A.L.R. Fed 2d 261.

§ 67-6511A. Development agreements. — Each governing board may, by ordinance adopted or amended in accordance with the notice and hearing provisions provided under section 67-6509, Idaho Code, require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel. The governing board shall adopt ordinance provisions governing the creation, form, recording, modification, enforcement and termination of conditional commitments. Such commitments shall be recorded in the office of the county recorder and shall take effect upon the adoption of the amendment to the zoning ordinance. Unless modified or terminated by the governing board after a public hearing, a commitment is binding on the owner of the parcel, each subsequent owner, and each other person acquiring an interest in the parcel. A commitment is binding on the owner of the parcel even if it is unrecorded; however, an unrecorded commitment is binding on a subsequent owner or other person acquiring an interest in the parcel only if that subsequent owner or other person has actual notice of the commitment. A commitment may be modified only by the permission of the governing board after complying with the notice and hearing provisions of section 67-6509, Idaho Code. A commitment may be terminated, and the zoning designation upon which the use is based reversed, upon the failure of the requirements in the commitment after a reasonable time as determined by the governing board or upon the failure of the owner; each subsequent owner or each other person acquiring an interest in the parcel to comply with the conditions in the commitment and after complying with the notice and hearing provisions of section 67-6509, Idaho Code. By permitting or requiring commitments by ordinance the governing board does not obligate itself to recommend or adopt the proposed zoning ordinance. A written commitment shall be deemed written consent to rezone upon the failure of conditions imposed by the commitment in accordance with the provisions of this section.

History.

I.C., § 67-6511A, as added by 1991, ch. 146, § 1, p. 346; am. 1999, ch. 396, § 9, p. 1099.

CASE NOTES

Development agreement not required.

Force majeure clause.

Judicial review.

Development Agreement Not Required.

Where a county ordinance provided that, before permitting agricultural land to be rezoned residential, the board of commissioners “may” require a written proposal regarding services, the board was not required to enter into a development agreement with landowner. *Price v. Payette County Bd. of County Comm’rs*, 131 Idaho 426, 958 P.2d 583 (1998).

Neighboring landowner was not denied due process on the ground that he did not have adequate time to review revisions to a development agreement because there was no requirement in the county’s zoning ordinances that a conditional rezone application contain a development agreement; development agreements were not required for conditional rezones under the county’s zoning ordinances *Neighbors for the Pres. of the Big & Little Creek Cmty. v. Bd. of County Comm’rs*, 159 Idaho 182, 358 P.3d 67 (2015).

Force Majeure Clause.

A force majeure clause in a development agreement protected a developer who was required by the agreement to build a facility 75 feet in height and, then, prevented by the county zoning ordinances from doing so. *Burns Concrete, Inc. v. Teton County*, 161 Idaho 117, 384 P.3d 364 (2016).

Judicial Review.

Supreme court had jurisdiction to decide a neighboring landowner’s challenge a county decision to grant a utility company’s application for conditional rezone; the landowner’s argument regarding the validity of the company’s comprehensive plan was merely a subsidiary issue related to its challenge to the conditional rezone. *Neighbors for the Pres. of the Big & Little Creek Cmty. v. Bd. of County Comm’rs*, 159 Idaho 182, 358 P.3d 67 (2015).

RESEARCH REFERENCES

Idaho Law Review. — What's the Tiff About TIF?: An Incremental Approach to Improving the Perception, Awareness, and Effectiveness of Urban Renewal in Idaho, Comment. 50 Idaho L. Rev. 273 (2014)

§ 67-6512. Special use permits, conditions, and procedures. — (a) As part of a zoning ordinance each governing board may provide by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Denial of a special use permit or approval of a special use permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with requirements established thereby.

(b) Prior to granting a special use permit, at least one (1) public hearing in which interested persons shall have an opportunity to be heard shall be held. At least fifteen (15) days prior to the hearing, notice of the time and place, and a summary of the proposal shall be published in the official newspaper or paper of general circulation within the jurisdiction. Each local government is encouraged to post such notice on its official websites, if one is maintained. Notice may also be made available to other newspapers, radio and television stations serving the jurisdiction for use as a public service announcement. Notice shall be posted on the premises not less than one (1) week prior to the hearing. Notwithstanding jurisdictional boundaries, notice shall also be provided to property owners or purchasers of record within the land being considered, three hundred (300) feet of the external boundaries of the land being considered, and any additional area that may be substantially impacted by the proposed special use as determined by the commission, provided that in all cases notice shall be provided individually by mail to property owners or purchasers of record within the land being considered and within three hundred (300) feet of the external boundaries of the land being considered and provided further that where a special use permit is requested by reason of height allowance that notice shall be provided individually by mail to property owners or

purchasers of record within no less than three (3) times the distance of the height of the allowed height of a structure when more than one hundred (100) feet and within no less than one (1) mile when the peak height of a structure in an unincorporated area is four hundred (400) feet or more and, when four hundred (400) feet or more, the structure's proposed location and height shall be stated in the notice. Any property owner entitled to specific notice pursuant to the provisions of this subsection shall have a right to participate in public hearings before a planning commission, planning and zoning commission or governing board.

(c) When notice is required to two hundred (200) or more property owners or purchasers of record, alternate forms of procedures which would provide adequate notice may be provided by local ordinance in lieu of mailed notice. In the absence of a locally adopted alternative notice procedure, sufficient notice shall be deemed to have been provided if the city or county provides notice through a display advertisement at least four (4) inches by two (2) columns in size in the official newspaper of the city or county at least fifteen (15) days prior to the hearing date, in addition to site posting on all external boundaries of the site.

(d) Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those: (1) Minimizing adverse impact on other development;

(2) Controlling the sequence and timing of development;

(3) Controlling the duration of development;

(4) Assuring that development is maintained properly;

(5) Designating the exact location and nature of development; (6)

Requiring the provision for on-site or off-site public facilities or services;

(7) Requiring more restrictive standards than those generally required in an ordinance; (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction.

(e) Prior to granting a special use permit, studies may be required of the social, economic, fiscal, and environmental effects and any aviation hazard as defined in [section 21-501\(2\), Idaho Code](#), of the proposed special use. A

special use permit shall not be considered as establishing a binding precedent to grant other special use permits. A special use permit is not transferable from one (1) parcel of land to another.

(f) In addition to other processes permitted by this chapter, exceptions or waivers of standards, other than use, inclusive of the subject matter addressed by [section 67-6516, Idaho Code](#), in a zoning ordinance may be permitted through issuance of a special use permit or by administrative process specified by ordinance, subject to such conditions as may be imposed pursuant to a local ordinance drafted to implement subsection (d) of this section.

History.

[I.C., § 67-6512](#), as added by 1975, ch. 188, § 2, p. 515; am. 1985, ch. 141, § 2, p. 384; am. 1992, ch. 269, § 5, p. 830; am. 1999, ch. 396, § 10, p. 1099; am. 2003, ch. 142, § 2, p. 410; am. 2011, ch. 89, § 4, p. 192; am. 2012, ch. 334, §§ 1, 2, p. 926; am. 2014, ch. 93, § 6, p. 254.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 89, inserted the third sentence in subsection (b).

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 334, § 1, added the proviso to the end of the next-to-last sentence in subsection (b).

The 2012 amendment, by ch. 334, § 2, added subsection (f).

The 2014 amendment, by ch. 93, inserted “and any aviation hazard as defined in [section 21-501\(2\), Idaho Code](#)” in the first sentence of subsection (e).

Compiler’s Notes.

Section 3 of S.L. 2012, ch. 334, provided: “An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after passage and approval, and shall

apply to all permits and approvals granted prior to the effective date hereof. In addition, special use permits that have been approved and for which all opportunities to appeal pursuant to Title 67, **Chapter 65, Idaho Code**, have expired as of the effective date hereof, are declared to be valid and of continuing force and effect. Provided however, that claims for damages including diminishment of value shall not be extinguished or otherwise affected by the application of the provisions of this section. Section 1 of this act shall be in full force and effect on and after July 1, 2012.”

CASE NOTES

Agency exceeded its authority.

Denial of permit proper.

Evidence.

Notice.

Proper procedure.

Variance.

Agency Exceeded Its Authority.

Conditional use permit was granted to builder without authority; the city wholly ignored the provision of its avalanche zone district ordinance which required certification by an Idaho-licensed engineer prior to the granting of a conditional use permit. **Fischer v. City of Ketchum**, 141 Idaho 349, 109 P.3d 1091 (2005).

Under subsection (a) of this section, a special use permit may be granted for uses prescribed within the Boundary County, Idaho, Zoning and Subdivision Ordinance 99-06, and because operation of a gravel pit was not prescribed in the ordinance, the grant of the special use permit was improper. **Gardiner v. Boundary County Bd. of Comm’rs**, 148 Idaho 764, 229 P.3d 369 (2010), overruled on other grounds, **City of Osburn v. Randel**, 152 Idaho 906, 277 P.3d 353 (2012).

Denial of Permit Proper.

Upholding a city council’s denial of an application for a special use permit to erect a television transmission tower despite the planning and

zoning commission's prior approval, the appellate court held that the council retained the right to review decisions of the commission de novo, and since it was not acting in a quasi-judicial capacity when doing so, due process was not required. [Marcia T. Turner, L.L.C. v. City of Twin Falls, 144 Idaho 203, 159 P.3d 840 \(2007\).](#)

Evidence.

Although evidence of the city council's prior approval of applications for rezoning by other developers was not in the original record of the city council hearing at which the council denied the plaintiff developer's rezoning application, the reviewing court could properly consider the evidence about the other applications since the information was of public record at the time of the plaintiff's hearing before the city council; the city council was certainly aware of its own previous actions in approving those other applications, and, in fact, the city council had stipulated that the facts concerning the other applications were true and correct. [Workman Family Partnership v. City of Twin Falls, 104 Idaho 32, 655 P.2d 926 \(1982\).](#)

Notice.

Adequate notice is statutorily mandated when zoning authorities are requested to change the authorized use for a particular parcel of property, and where city's zoning ordinance required the submission of a concept plan and a narrative statement, they were to have been submitted with the application as it is not sufficient that they be provided at some later date, such as the date of the public hearing itself. [Johnson v. City of Homedale, 118 Idaho 285, 796 P.2d 162 \(Ct. App. 1990\).](#)

In order for downstream landowners to be entitled to actual notice under subsection (b) of this section, the commission was first required to find that their property would be substantially impacted by the issuance of the permit; as commission made no such finding, and since downstream landowners raised no other issues with regard to the sufficiency of the notice of hearing, their appeal to the board and petition to review filed with the district court were not timely filed. [Enright v. Blaine County, 127 Idaho 498, 903 P.2d 87 \(1995\).](#)

Although the neighbors claimed a number of due process violations, development approval process followed by the Valley County board of

commissioners did not rise to the level of a due process violation justifying reversal; there were four public hearings on the developer's application, and the neighbors were heard and participated in each hearing. [Neighbors for a Healthy Gold Fork v. Valley County](#), 145 Idaho 121, 176 P.3d 126 (2007).

Proper Procedure.

In approving a special use permit, county planning and zoning commission properly followed the law in evaluating each criterion of the applicable ordinance, Nez Perce County, Idaho, Ordinances, Zoning Ordinance 72z; concluding that the application met each one, and further concluding that the application did not conflict with the goals and policies of the comprehensive plan. [Krempasky v. Nez Perce County Planning & Zoning \(In re Approval of a Conditional Use Permit #CUP-2008-3\)](#), 150 Idaho 231, 245 P.3d 983 (2010).

Developers' suit, asserting claims of illegal impact fees and inverse condemnation based on increased mitigation costs, was dismissed, because the developers failed to exhaust administrative remedies under §§ 67-6519(4) and 67-6521 and because they did not seek judicial review or request a regulatory taking analysis, as provided in subsection (a) of this section. [Buckskin Props. v. Valley County](#), 154 Idaho 486, 300 P.3d 18 (2013).

Variance.

To the extent that a city ordinance permits height restrictions to be waived by a conditional/special use permit, the ordinance conflicts with § 67-6516 and is, therefore, void. Such a permit concerns the proposed use of property, not the waiver of zoning ordinance requirements, such as the maximum height of buildings. [Burns Holdings, LLC v. Teton County Bd. of Comm'rs](#), 152 Idaho 440, 272 P.3d 412 (2012) (see 2012 amendment of this section).

Cited [Palmer v. Board of County Comm'rs](#), 117 Idaho 562, 790 P.2d 343 (1990); [Highlands Dev. Corp. v. City of Boise](#), 145 Idaho 958, 188 P.3d 900 (2008); [Johnson v. Blaine County](#), 146 Idaho 916, 204 P.3d 1127 (2009).

§ 67-6513. Subdivision ordinance. — Each governing board shall provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for standards and for the processing of applications for subdivision permits under sections 50-1301 through 50-1329, Idaho Code. Each such ordinance may provide for mitigation of the effects of subdivision development on the ability of political subdivisions of the state, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision. Fees established for purposes of mitigating the financial impacts of development must comply with the provisions of chapter 82, title 67, Idaho Code. Denial of a subdivision permit or approval of a subdivision permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

History.

I.C., § 67-6513, as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 6, p. 830; am. 1999, ch. 396, § 11, p. 1099; am. 2003, ch. 142, § 3, p. 410.

CASE NOTES

Judicial Review.

A decision regarding a subdivision application is a decision granting or denying a permit under this section and is, therefore, subject to judicial review under § 67-6519. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Ada County board of county commissioner's decision not to grant a developer additional time to obtain approval of a final plat — which was necessary to obtain a subdivision permit — essentially was a denial of the developer's application for the permit and prevented the developer from developing its property. Because the board's decision involved the denial of

a permit authorizing development, it was subject to judicial review under § 67-6519. *Dry Creek Partners, LLC v. Ada County Comm'rs Ex Rel. State*, 148 Idaho 11, 217 P.3d 1282 (2009).

Cited *Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 148 P.3d 1247 (2006); *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008); *Hehr v. City of McCall*, 155 Idaho 92, 305 P.3d 536 (2013).

§ 67-6514. Existing zoning or subdivision ordinances. — A governing board, using any zoning or subdivision ordinance in existence on the effective date of this chapter, shall conduct a review of those ordinances and shall make necessary amendments in accordance with this chapter prior to January 1, 1978, following notice and hearing pursuant to section 67-6509, Idaho Code.

History.

I.C., § 67-6514, as added by 1975, ch. 188, § 2, p. 515.

STATUTORY NOTES

Compiler's Notes.

The phrase “the effective date of this chapter” refers to the effective date of S.L. 1975, Chapter 188, which was effective July 1, 1995.

CASE NOTES

Cited Balser v. Kootenai County Bd. of Comm'rs, 110 Idaho 37, 714 P.2d 6 (1986).

§ 67-6515. Planned unit developments. — As part of or separate from the zoning ordinance, each governing board may provide, by ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided under section 67-6509, Idaho Code, for the processing of applications for planned unit development permits.

A planned unit development may be defined in a local ordinance as an area of land in which a variety of residential, commercial, industrial, and other land uses are provided for under single ownership or control. Planned unit development ordinances may include, but are not limited to, requirements for minimum area, permitted uses, ownership, common open space, utilities, density, arrangements of land uses on a site, and permit processing. Planned unit developments may be permitted pursuant to the procedures for processing applications for special use permits following the notice and hearing procedures provided in [section 67-6512, Idaho Code](#). Denial of a planned unit development permit or approval of a planned unit development permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by [section 67-8003, Idaho Code](#), consistent with the requirements established thereby.

History.

[I.C., § 67-6515](#), as added by 1975, ch. 188, § 2, p. 515; am. 1999, ch. 396, § 12, p. 1099; am. 2003, ch. 142, § 4, p. 410.

CASE NOTES

Variance.

Where a local zoning ordinance limited variances to circumstances “peculiar” to the property and not applicable “generally to land or buildings in the neighborhood,” it was error for the local zoning board to allow a landowner to increase density of land use in order to make needed remodeling economically feasible. [City of Burley v. McCaslin Lumber Co., 107 Idaho 906, 693 P.2d 1108 \(Ct. App. 1984\)](#).

Cited [Canal/Norcrest/Columbus Action Comm. v. City of Boise, 137 Idaho 377, 48 P.3d 1266 \(2002\)](#); [Highlands Dev. Corp. v. City of Boise, 145](#)

Idaho 958, 188 P.3d 900 (2008); *Johnson v. Blaine County*, 146 Idaho 916, 204 P.3d 1127 (2009).

§ 67-6515A. Transfer of development rights. — (1) Any city or county governing body may, by ordinance and following notice and hearing procedures provided for under section 67-6509, Idaho Code, create development rights and establish procedures authorizing landowners to voluntarily transfer said development rights subject to:

(a) Such conditions as the governing body shall determine to fulfill the goals of the city or county to preserve open space, protect wildlife habitat and critical areas, enhance and maintain the rural character of lands with contiguity to agricultural lands suitable for long-range farming and ranching operations and avoid creation of aviation hazards as defined in [section 21-501\(2\), Idaho Code](#); and

(b) Voluntary acceptance by the landowner of the development rights and any land use restrictions conditional to such acceptance.

(2) Before designating sending areas and receiving areas, a city or county shall conduct an analysis of the market in an attempt to assure that areas designated as receiving areas will have the capacity to accommodate the number of development rights expected to be generated from the sending areas.

(3) Ordinances providing for a transfer of development rights shall not require a property owner in a sending area to sell development rights. Once a transfer of development rights has been exercised it shall constitute a restriction on the development of the property in perpetuity, unless the city or county elects to extinguish such restriction pursuant to the provisions of this chapter.

(4) A city or county may not condition an application for a permit to which an applicant is otherwise entitled under existing zoning and subdivision ordinances on the acquisition of development rights. A city or county may not condition an application for a zoning district boundary change which is consistent with the comprehensive plan on the acquisition of development rights. A city or county may not reduce the density of an existing zone and thereafter require an applicant to acquire development

rights as a condition of approving a request for a zoning district boundary change which would permit greater density.

(5) It shall be at the discretion of the persons selling and buying a transferable development right to determine whether a right will be transferred permanently without being exercised in a designated receiving area or whether a right will have requirements to be exercised within a designated receiving area within a set time period. If the development right is not used before the end of the time period provided by written contract and any extension thereof, the development right will revert to the owner of the property from which it was transferred.

(6) No transfer of a development right, as contemplated herein, shall affect the validity or continued right to use any water right that is appurtenant to the real property from which such development right is transferred. The transfer of a water right shall remain subject to the provisions of title 42, Idaho Code.

(7)(a) Ordinances providing for the transfer of development rights shall prescribe procedures for the issuance and recording of the instruments necessary to sever development rights from the sending property and to affix the development rights to the receiving property. These instruments shall specifically describe the property, shall be executed by all lienholders and other parties with an interest of record in any of the affected property, and shall be recorded with the county recorder. Transfers of development rights without such written and recorded consent shall be void.

(b) A development right which is transferred shall be deemed to be an interest in real property and the rights evidenced thereby shall inure to the benefit of the transferee, his heirs, successors and assigns. An unexercised development right shall not be taxed as real or personal property.

(8) For the purposes of this section:

(a) "Development rights" shall mean the rights permitted to a lot, parcel or area of land under a zoning or other ordinance respecting permissible use, area, density, bulk or height of improvements. Development rights may be calculated and allocated in accordance with such factors as area,

floor area, floor area ratios, density, height limitations, or any other criteria that will effectively quantify a value for the development right in a reasonable and uniform manner that will carry out the objectives of this section.

(b) “Receiving area” shall mean one (1) or more designated areas of land to which development rights generated from one (1) or more sending areas may be transferred and in which increased development is permitted to occur by reason of such transfer.

(c) “Sending area” shall mean one (1) or more designated areas of land in which development rights may be designated for use in one (1) or more receiving areas.

(d) “Transfer of development rights” shall mean the process by which development rights are transferred from one (1) lot, parcel or area of land in any sending area to another lot, parcel or area of land in one (1) or more receiving areas.

History.

I.C., § 67-6515A, as added by 1999, ch. 363, § 1, p. 958; am. 2003, ch. 224, § 1, p. 576; am. 2014, ch. 93, § 7, p. 254.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 93, in subsection (1), inserted “and following notice and hearing procedures provided for under [section 67-6509, Idaho Code](#)” in the introductory language and inserted “and avoid creation of aviation hazards as defined in [section 21-501\(2\), Idaho Code](#)” in paragraph (a).

CASE NOTES

[Invalid ordinance.](#)

[Purpose.](#)

[Invalid Ordinance.](#)

Where city's express intention in enacting a TDR ordinance was to revitalize the downtown corridor while preserving historic buildings within that corridor, the city's focus is on buildings within the city itself, an urban focus, and it is not acting in the rural context envisioned by the legislature with this section. *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 236 P.3d 1284 (2010).

Purpose.

The plain language of this section does not allow it to be used to enact a TDR ordinance for historic preservation purposes. The language of this section evidences an intent to preserve rural values, e.g., to preserve open spaces, wildlife habitat and critical areas or agricultural land. *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 236 P.3d 1284 (2010).

§ 67-6516. Variance — Definition — Application — Notice — Hearing. — Each governing board shall provide, as part of the zoning ordinance, for the processing of applications for variance permits. A variance is a modification of the bulk and placement requirements of the ordinance as to lot size, lot coverage, width, depth, front yard, side yard, rear yard, setbacks, parking space, height of buildings, or other ordinance provision affecting the size or shape of a structure or the placement of the structure upon lots, or the size of lots. A variance shall not be considered a right or special privilege, but may be granted to an applicant only upon a showing of undue hardship because of characteristics of the site and that the variance is not in conflict with the public interest. Prior to granting a variance, notice and an opportunity to be heard shall be provided to property owners adjoining the parcel under consideration and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in section 21-501, Idaho Code. Denial of a variance permit or approval of a variance permit with conditions unacceptable to the landowner may be subject to the regulatory taking analysis provided for by section 67-8003, Idaho Code, consistent with the requirements established thereby.

History.

I.C., § 67-6516, as added by 1975, ch. 188, § 2, p. 515; am. 1999, ch. 396, § 13, p. 1099; am. 2003, ch. 142, § 5, p. 410; am. 2014, ch. 93, § 8, p. 254.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 93, added “and the manager or person in charge of the local airport if the variance could create an aviation hazard as defined in [section 21-501, Idaho Code](#)” at the end of the next-to-last sentence.

CASE NOTES

Procedural requirements.

Review.

Variance.

- Defined.
- Improper.
- In general.

Procedural Requirements.

The requirement of procedural due process is applicable to proceedings on a request to change the land use authorized for a particular parcel of property, regardless of whether the subject of such proceedings carries the label “variance” or “rezoning.” *Gay v. County Comm’rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Notice, opportunity to present and to rebut evidence, preparation of specific findings of fact and conclusions of law, and the keeping of a transcribable record comprise a common core of procedural due process requirements, constitutionally mandated in all cases where zoning authorities are requested to change the land use authorized for a particular parcel of property. *Gay v. County Comm’rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Where no transcribable record was kept of a county rezoning hearing and, without such a record, a reviewing court could not determine that the interested parties received notice of all meetings at which information concerning the rezoning request was received, or that an opportunity to rebut such information was afforded, the county’s decision authorizing the rezoning had to be set aside. *Gay v. County Comm’rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Review.

General standards governing judicial review of administrative action are set forth in § 67-5215 (now repealed), part of the Administrative Procedure Act, but specific standards governing review of a zoning decision depend upon the nature of the power exercised in making the decision. *City of*

Burley v. McCaslin Lumber Co., 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

In reviewing a variance decision, the function of the reviewing court is to determine whether the zoning board's findings are supported by substantial evidence and, if so, whether the board's conclusions properly apply the zoning ordinance to the facts as found. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

An applicant denied a variance permit by a county board of commissioners, pursuant to this section, or aggrieved by the decision of the board, may, pursuant to § 67-6519, seek judicial review under the Idaho administrative procedures act, § 67-5201 et seq. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

Variance.

— Defined.

A variance, as defined in this section, does not include a change of authorized land use. Rather, it is limited to adjustment of certain regulations concerning the physical characteristics of the subject property. *Gay v. County Comm'rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

— Improper.

Where a local zoning ordinance limited variances to circumstances “peculiar” to the property and not applicable “generally to land or buildings in the neighborhood,” it was error for the local zoning board to allow a landowner to increase density of land use in order to make needed remodeling economically feasible. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

Where landowners violated county zoning ordinances by building decks within required setback areas without building permits, it was well within the discretion of the board of commissioners to refuse to grant variance requests, as allowing individuals to violate the county zoning ordinances would be detrimental to the public welfare. *Wohrle v. Kootenai County*, 147 Idaho 267, 207 P.3d 998 (2009).

— In General.

To the extent that a city ordinance permits height restrictions to be waived by a conditional/special use permit, the ordinance conflicts with this section and is, therefore, void. Such a permit concerns the proposed use of property, not the waiver of zoning ordinance requirements, such as the maximum height of buildings. *Burns Holdings, LLC v. Teton County Bd. of Comm'rs*, 152 Idaho 440, 272 P.3d 412 (2012) (see 2012 amendment of § 67-6512).

Cited *Blaha v. Board of Ada County Comm'rs*, 134 Idaho 770, 9 P.3d 1236 (2000); *Canal/Norcrest/Columbus Action Comm. v. City of Boise*, 137 Idaho 377, 48 P.3d 1266 (2002); *Eacret v. Bonner County*, 139 Idaho 780, 86 P.3d 494 (2004).

§ 67-6517. Future acquisitions map. — Upon the recommendation of the planning or planning and zoning commission each governing board may adopt, amend, or repeal a future acquisitions map in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code. The map shall designate land proposed for acquisition by a public agency for a maximum twenty (20) year period. Lands designated for acquisition may include land for:

(a) Streets, roads, other public ways, or transportation facilities proposed for construction or alteration; (b) Proposed schools, airports, or other public buildings; (c) Proposed parks or other open spaces; or (d) Lands for other public purposes.

Upon receipt of a request for a permit as defined in this chapter, or a building permit as defined in a local ordinance, for a development on any lands designated upon the future acquisitions map, the zoning or planning and zoning commission or the governing board shall notify the public agency proposing to acquire the land. Within thirty (30) days of the date of that notice, the public agency may, in writing, request the commission or governing board to suspend consideration of the permit for sixty (60) days from the date of the request to allow the public agency to negotiate with the land owner to obtain an option to purchase the land, acquire the land, or institute condemnation proceedings as may be authorized in the Idaho Code. If the public agency fails to do so within the sixty (60) days, the commission or governing board shall resume consideration of the permit. Nothing in this chapter shall limit a governing board from adopting local ordinances as required or authorized which include lands on the future acquisitions map.

History.

I.C., § 67-6517, as added by 1975, ch. 188, § 2, p. 515; am. 1994, ch. 90, § 1, p. 206.

CASE NOTES

Cited Taylor v. Canyon County Bd. of Comm'rs, 147 Idaho 424, 210 P.3d 532 (2009).

§ 67-6518. Standards. — Each governing board may adopt standards for such things as: building design; blocks, lots, and tracts of land; yards, courts, greenbelts, planting strips, parks, and other open spaces; trees; signs; parking spaces; roadways, streets, lanes, bicycleways, pedestrian walkways, rights-of-way, grades, alignments, and intersections; lighting; easements for public utilities; access to streams, lakes, and viewpoints; water systems; sewer systems; storm drainage systems; street numbers and names; house numbers; schools, hospitals, and other public and private development.

Standards may be provided as part of zoning, subdivision, planned unit development, or separate ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in [section 67-6509, Idaho Code](#).

Whenever the ordinances made under this chapter impose higher standards than are required by any other statute or local ordinance, the provisions of ordinances made pursuant to this chapter shall govern.

History.

[I.C., § 67-6518](#), as added by 1975, ch. 188, § 2, p. 515.

CASE NOTES

Highway Access.

An ordinance which limits access to a state highway from new developments, and which was drawn up with the cooperation of the Idaho transportation department and acknowledges that department's ultimate control over access to and on state highways, does not usurp the authority of the department. [Wylie v. State, 151 Idaho 26, 253 P.3d 700 \(2011\)](#).

Cited [Canal/Norcrest/Columbus Action Comm. v. City of Boise, 137 Idaho 377, 48 P.3d 1266 \(2002\)](#).

§ 67-6519. Application granting process. — (1) As part of ordinances required or authorized under this chapter, a procedure shall be established for processing in a timely manner applications for zoning changes, subdivisions, variances, special use permits and such other applications required or authorized pursuant to this chapter for which a reasonable fee may be charged.

(2) Where the commission hears an application, the commission shall have a reasonable time fixed by the governing board to examine the application before the commission makes its decision on the application or makes its recommendation to the governing board. Each commission or governing board shall establish by rule a time period within which a recommendation or decision must be made. Provided however, any application which relates to a public school facility shall receive priority consideration and shall be reviewed for approval, denial or recommendation by the commission or the governing board at the earliest reasonable time, regardless of the timing of its submission relative to other applications which are not related to public school facilities.

(3) When considering an application which relates to a public school facility, the commission shall specifically review the application for the effect it will have on increased vehicular, bicycle and pedestrian volumes on adjacent roads and highways. To ensure that the state highway system or the local highway system can satisfactorily accommodate the proposed school project, the commission shall request the assistance of the Idaho transportation department if state highways are affected, or the local highway district with jurisdiction if the affected roads are not state highways. The Idaho transportation department, the appropriate local highway jurisdiction, or both as determined by the commission, shall review the application and shall report to the commission on the following issues as appropriate: the land use master plan; school bus plan; access safety; pedestrian plan; crossing guard plan; barriers between highways and school; location of school zone; need for flashing beacon; need for traffic control signal; anticipated future improvements; speed on adjacent highways; traffic volumes on adjacent highways; effect upon the highway's level of service; need for acceleration or deceleration lanes; internal traffic

circulation; anticipated development on surrounding undeveloped parcels; zoning in the vicinity; access control on adjacent highways; required striping and signing modifications; funding of highway improvements to accommodate development; proposed highway projects in the vicinity; and any other issues as may be considered appropriate to the particular application.

(4) Whenever a county or city considers a proposed subdivision or any other site-specific land development application authorized by this chapter, it shall provide written notice concerning the development proposal by mail, or electronically by mutual agreement, to all irrigation districts, ground water districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations and drainage districts that have requested, in writing, to receive notice. Any irrigation districts, ground water districts, Carey act operating companies, nonprofit irrigation entities, lateral ditch associations and drainage districts requesting notice shall continue to provide updated and current contact information to the county or city in order to receive notice. Any notice provided under this subsection shall be provided no less than fifteen (15) days prior to the public hearing date concerning the development proposal as required by this chapter or local ordinance. Any notice provided under this subsection shall not affect or eliminate any other statutory requirements concerning delivery of water, including those under sections 31-3805 and 67-6537, Idaho Code.

(5) Whenever a governing board or zoning or planning and zoning commission grants or denies an application, it shall specify:

- (a) The ordinance and standards used in evaluating the application;
- (b) The reasons for approval or denial; and
- (c) The actions, if any, that the applicant could take to obtain approval.

Every final decision rendered shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to [section 67-8003, Idaho Code](#). An applicant denied an application or aggrieved by a final decision concerning matters identified in [section 67-6521\(1\)\(a\), Idaho Code](#), may within twenty-eight (28) days after all remedies have been exhausted under local ordinance seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code.

History.

I.C., § 67-6519, as added by 1975, ch. 188, § 2, p. 515; am. 1993, ch. 216, § 111, p. 587; am. 2000, ch. 431, § 1, p. 1388; am. 2003, ch. 123, § 1, p. 373; am. 2010, ch. 175, § 1, p. 359; am. 2011, ch. 279, § 1, p. 759; am. 2018, ch. 246, § 1, p. 572.

STATUTORY NOTES

Cross References.

Idaho transportation department, § 40-501 et seq.

Amendments.

The 2010 amendment, by ch. 175, in the section heading, substituted “Application” for “Permit”; in subsection (1), inserted “zoning changes, subdivisions, variances, special use” and “and such other similar applications required or authorized pursuant to this chapter”; in subsection (2), in the first sentence, deleted “for a permit” following “application,” in the second sentence, substituted “application” for “permit,” and in the fourth sentence, deleted “permit” preceding “application”; in the first sentence in subsection (3), twice deleted “permit” preceding “application”; in the introductory paragraph in subsection (4), deleted “permit” preceding “application”; in paragraph (4)(c), substituted “obtain approval” for “obtain a permit”; and in the last paragraph, added the first sentence, and in the last sentence, substituted “an application” for “a permit” and inserted “final” and “concerning matters identified in **section 67-6521(1)(a), Idaho Code.**”

The 2011 amendment, by ch. 279, substituted “Where the commission hears an application” for “Each application required or authorized under this chapter shall first be submitted to the zoning or planning and zoning commission for its recommendation or decision” at the beginning of subsection (2).

The 2018 amendment, by ch. 246, inserted present subsection (4) and redesignated former subsection (4) as subsection (5).

Effective Dates.

Section 5 of S.L. 2010, ch. 175 declared an emergency. Approved March 31, 2010.

CASE NOTES

Exclusion of trial de novo.

Exhaustion of administrative remedies.

Failure to appeal.

Judicial review.

Mandamus.

Petitions for declaratory judgment.

Substantial evidence.

Writ of mandate.

Exclusion of Trial De Novo.

Where district court ordered trial de novo because record of rezoning hearing before defendants was inadequate for appeal on the record, the court erred in issuing such orders since § 67-5215 (now repealed) makes no provision for a trial de novo, subsection (g) ultimately limits the district court to either affirming the board decision, remanding for further proceedings, or reversing and modifying if substantial rights of the plaintiff are prejudiced, and since the other means of review permitted are specifically excluded under this section. *Hill v. Board of County Comm'rs*, 101 Idaho 850, 623 P.2d 462 (1981) (See § 67-5279).

Exhaustion of Administrative Remedies.

Developers' suit, asserting claims of illegal impact fees and inverse condemnation based on increased mitigation costs, was dismissed, because the developers failed to exhaust administrative remedies under § 67-6521 and subsection (4) [now (5)] of this section and because they did not seek judicial review or request a regulatory taking analysis as provided in § 67-6512(a). *Buckskin Props. v. Valley County*, 154 Idaho 486, 300 P.3d 18 (2013).

Failure to Appeal.

Property owner who brought suit challenging denial of conditional use permit to operate an adult bookstore and theater in area zoned "commercial central" by city council on ground that city's interpretation of the zoning

code was unreasonable and arbitrary was bound by the district court's decision upholding the city's interpretation in a subsequent proceeding where he failed to appeal the first decision or the denial of the permit for the second time by the city council. *Tovar v. Billmeyer*, 98 Idaho 891, 575 P.2d 489 (1978).

Judicial Review.

The method of review set forth in § 67-5215 (now repealed) and this section, is the exclusive procedure for appealing an adverse zoning decision. *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984) (See § 67-5279).

A landowner's action seeking a declaratory judgment interpreting § 67-6511 and a writ of mandamus requiring a city to accept his interpretation of the statute is in reality an appeal of a city's zoning decision and should be reviewed only under the guidelines set forth in § 67-5215 (now repealed). *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984) (See § 67-5279).

The express provisions of § 67-6521(d) and this section, limit a subdivision plat applicant appealing an adverse decision seeking judicial review of the city council's action pursuant to § 67-5215 (now repealed). *Curtis v. City of Ketchum*, 111 Idaho 27, 720 P.2d 210 (1986) (See § 67-5279).

The district court correctly held that applicant for a subdivision plat was precluded from challenging the city's actions with regard to the application because he failed to seek review of the city's action within 60 [now 28] days as required by this section. *Curtis v. City of Ketchum*, 111 Idaho 27, 720 P.2d 210 (1986).

Only after the exhaustion of remedies provided under this chapter and under local ordinances may an unsuccessful applicant for a permit or an affected person seek judicial review. *Palmer v. Board of County Comm'rs*, 117 Idaho 562, 790 P.2d 343 (1990).

District court's summary judgment, voiding approval of a conditional use permit to develop a gravel mine and asphalt plant that was granted by the planning and development council, was reversed, as the board of county commissioners was the designated decision-making body for appeals of

decisions of the planning and development council, and the district court should have applied the doctrine of exhaustion to dismiss the landowner's complaint. [White v. Bannock County Comm'rs](#), 139 Idaho 396, 80 P.3d 332 (2003).

Subsection (4) [now (5)] did not provide a right for a dairy to obtain judicial review of county ordinance changing a county comprehensive plan map where the request to change the comprehensive plan map was not an application for a permit. [Giltner Dairy, LLC v. Jerome County](#), 145 Idaho 630, 181 P.3d 1238 (2008).

A decision regarding a subdivision application is a decision granting or denying a permit under § 67-6513 and is, therefore, subject to judicial review under this section. [Terrazas v. Blaine County](#), 147 Idaho 193, 207 P.3d 169 (2009).

An applicant denied a variance permit by a county board of commissioners, pursuant to § 67-6516, or aggrieved by the decision of the board, may, pursuant to this section, seek judicial review under the Idaho administrative procedures act, § 67-5201 et seq. [Wohrle v. Kootenai County](#), 147 Idaho 267, 207 P.3d 998 (2009).

Both § 67-6521 and this section provide for judicial review only after all remedies have been exhausted under local ordinances. Because a landowner failed to exhaust his administrative remedies before filing his petition for judicial review of a city's zoning decision, the appellate court had to vacate the decision of the trial court and remand the case with instructions to dismiss the petition for judicial review. [Rollins v. Blaine County](#), 147 Idaho 729, 215 P.3d 449 (2009).

Because landowners did not appeal the denial of a permit or the conditions attached to a permit, they did not have the right to seek judicial review of administrative proceedings enforcing a zoning ordinance. [Stafford v. Kootenai County](#), 150 Idaho 841, 252 P.3d 1259 (2011).

Mandamus.

As this section gives counties the discretion to grant or deny an application for a permit authorized by this chapter of 1975, a writ of mandamus is not available to compel or revoke the issuance of a permit. Thus, the district court properly denied petition to halt the building of bus

storage facility. *Brady v. City of Homedale*, 130 Idaho 569, 944 P.2d 704 (1997).

Petitions for Declaratory Judgment.

Petitions for declaratory judgment are outside of the scope of this section and § 67-5215 (now repealed), which set forth the exclusive procedures for seeking judicial review of zoning decisions made under this chapter. *McCuskey v. Canyon County*, 123 Idaho 686, 851 P.2d 982 (Ct. App. 1993) (See § 67-5279).

Substantial Evidence.

Action of the governing board denying a subdivision application and preliminary plat was vacated; although the governing board specified its reasons for denying a subdivision application and preliminary plat, and for requiring that the application be accompanied by a proposal for central water and sewer, its finding of fact that the proposed subdivision was in an area of increasing residential development close to a city where it was projected that development of central sewer system and water lines would be extended in the reasonably near future, was not supported by substantial evidence, and prejudiced the landowner in that the board's action taken was based on an issue upon which no evidence was presented. *Sanders Orchard v. Gem County*, 137 Idaho 695, 52 P.3d 840 (2002).

Writ of Mandate.

Although this section gives counties the discretion to grant or deny any application for a permit authorized or mandated by this chapter, a writ of mandate is not available to compel the issuance of such a permit. *McCuskey v. Canyon County*, 123 Idaho 657, 851 P.2d 953 (1993).

Cited *Cooper v. Board of County Comm'rs*, 101 Idaho 407, 614 P.2d 947 (1980); *Langmeyer v. State*, 104 Idaho 53, 656 P.2d 114 (1982); *Lowery v. Board of County Comm'rs*, 115 Idaho 64, 764 P.2d 431 (Ct. App. 1988); *Butters v. Hauser*, 125 Idaho 79, 867 P.2d 953 (1993); *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008); *Euclid Ave. Trust v. City of Boise*, 146 Idaho 306, 193 P.3d 853 (2008); *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

§ 67-6520. Hearing examiners. — (1) Hearing examiners include professionally trained or licensed staff planners, attorneys, engineers, or architects. If authorized by local ordinance adopted, amended, or repealed in accordance with the notice and hearing procedures provided in section 67-6509, Idaho Code, hearing examiners may be appointed by a governing board or zoning or planning and zoning commission for hearing applications for subdivisions, special use permits, variances and requests for rezoning which are in accordance with the plan. Notice, hearing, and records before the examiner shall be as provided in this chapter for the zoning or planning and zoning commission. Whenever a hearing examiner hears an application, he may, pursuant to local ordinance, grant or deny the application or submit a recommendation to the governing board or zoning or planning and zoning commission. His decision or recommendation shall specify:

(a) The ordinance and standards used in evaluating the application; (b) The reasons for the recommendation or decision; and (c) The actions, if any, that the applicant could take to obtain an approval.

(2) Every final decision shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to [section 67-8003, Idaho Code](#). An applicant denied an application or aggrieved by a final decision concerning matters identified in [section 67-6521\(1\)\(a\), Idaho Code](#), may within twenty-eight (28) days after all appellate remedies have been exhausted under local ordinance seek judicial review as provided by chapter 52, title 67, Idaho Code.

History.

[I.C., § 67-6520](#), as added by 1975, ch. 188, § 2, p. 515; am. 1992, ch. 269, § 7, p. 830; am. 1993, ch. 216, § 112, p. 587; am. 1996, ch. 150, § 1, p. 488; am. 1999, ch. 396, § 14, p. 1099; am. 2010, ch. 175, § 2, p. 359.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 175, added the subsection designations; in the first sentence in the introductory paragraph in subsection (1), inserted “attorneys,” and substituted “applications for subdivisions, special use permits, variances and requests for rezoning which are in accordance with the plan” for “applications for subdivision, special use and variance permits and requests for zoning district boundary changes which are in accordance with the plan”; in paragraph (1)(c), substituted “obtain an approval” for “obtain a permit or zoning district boundary change in accordance with the plan approval”; and in subsection (2), added the first sentence, and in the last sentence, substituted “an application” for “a permit,” and inserted “final” and “concerning matters identified in [section 67-6521\(1\)\(a\), Idaho Code.](#)”

Effective Dates.

Section 2 of S.L. 1996, ch. 150 declared an emergency. Approved March 11, 1996.

Section 5 of S.L. 2010, ch. 175 declared an emergency. Approved March 31, 2010.

CASE NOTES

Hearing Procedure.

While a single hearing examiner could conduct a land use planning hearing if authorized by local ordinance, where the applicable ordinance specifically called for a five-member appeal board, the county employed unlawful procedure. However, although the initial hearing was held upon unlawful procedure, the landowner’s substantial rights had not been prejudiced thereby. [Spencer v. Kootenai County, 145 Idaho 448, 180 P.3d 487 \(2008\).](#)

§ 67-6521. Actions by affected persons. —

(1)(a) As used herein, an affected person shall mean one having a bona fide interest in real property which may be adversely affected by:

(i) The approval, denial or failure to act upon an application for a subdivision, variance, special use permit and such other similar applications required or authorized pursuant to this chapter;

(ii) The approval of an ordinance first establishing a zoning district upon annexation or the approval or denial of an application to change the zoning district applicable to specific parcels or sites pursuant to [section 67-6511, Idaho Code](#); or

(iii) An approval or denial of an application for conditional rezoning pursuant to [section 67-6511A, Idaho Code](#).

(b) Any affected person may at any time prior to final action on an application required or authorized under this chapter, if no hearing has been held on the application, petition the commission or governing board in writing to hold a hearing pursuant to [section 67-6512, Idaho Code](#); provided however, that if twenty (20) affected persons petition for a hearing, the hearing shall be held.

(c) After a hearing, the commission or governing board may:

(i) Grant or deny an application; or

(ii) Delay such a decision for a definite period of time for further study or hearing. Each commission or governing board shall establish by ordinance or resolution a time period within which a recommendation or decision must be made.

(d) Every final decision rendered shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to [section 67-8003, Idaho Code](#). An affected person aggrieved by a final decision concerning matters identified in [section 67-6521\(1\)\(a\), Idaho Code](#), may within twenty-eight (28) days after all remedies have been exhausted under local ordinances seek judicial review as provided by chapter 52, title 67, Idaho Code.

(2)(a) Authority to exercise the regulatory power of zoning in land use planning shall not simultaneously displace coexisting eminent domain authority granted under [section 14, article I, of the constitution](#) of the state of Idaho and chapter 7, title 7, Idaho Code.

(b) An affected person claiming “just compensation” for a perceived “taking,” the basis of the claim being that a final action restricting private property development is actually a regulatory action by local government deemed “necessary to complete the development of the material resources of the state,” or necessary for other public uses, may seek a judicial determination of whether the claim comes within defined provisions of [section 14, article I, of the constitution](#) of the state of Idaho relating to eminent domain. Under these circumstances, the affected person is exempt from the provisions of subsection (1) of this section and may seek judicial review through an inverse condemnation action specifying neglect by local government to provide “just compensation” under the provisions of [section 14, article I, of the constitution](#) of the state of Idaho and chapter 7, title 7, Idaho Code.

History.

[I.C., § 67-6521](#), as added by 1975, ch. 188, § 2, p. 515; am. 1993, ch. 216, § 113, p. 587; am. 1996, ch. 199, § 1, p. 620; am. 2010, ch. 175, § 3, p. 359.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 175, in the introductory language in paragraph (1)(a), inserted “bona fide”; added the paragraph (1)(a)(i) designation and therein rewrote the paragraph, which formerly read: “the issuance or denial of a permit authorizing the development”; added paragraphs (1)(a)(ii) and (1)(a)(iii); in paragraphs (1)(b) and (1)(c)(i), substituted “an application” for “a permit”; in paragraph (1)(c)(ii), substituted “ordinance or resolution” for “rule and regulation”; in subsection (1)(d), added the first sentence, and in the last sentence, inserted “final” and “concerning matters identified in section 67-8003”; and in the first sentence in paragraph (2)(b), substituted “a final action” for “a specific zoning action or permitting action.”

Effective Dates.

Section 5 of S.L. 2010, ch. 175 declared an emergency. Approved March 31, 2010.

CASE NOTES

Affected person.

Declaratory judgment.

Exhaustion of administrative remedies.

Judicial review.

— Timely filing.

Procedural requirements.

Review of commission decision.

Scope of review.

Standing.

Zoning.

Affected Person.

An “affected person” for the purposes of this section is one having an interest in real property which may be adversely affected by the issuance or denial of a permit authorizing development; a city is an “affected person” who can be aggrieved by the wrongful issuance of a zoning variance and has standing to appeal an adverse decision from its Zoning Appeals Board to the district court. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

Appellants, who owned land within 300 feet of a proposed planned unit development (PUD), had standing to challenge a board of county commissioners’ decision to approve the PUD and associated zoning changes because they were “affected persons” under paragraph (1)(d), as they could be adversely affected by the decision to allow a development proposing an golf course and residential resort on property adjacent to their rural homes. *Evans v. Teton County*, 139 Idaho 71, 73 P.3d 84 (2003).

There was evidence that if the corporation's project failed to adhere to the conditions imposed by the planning and zoning commission in issuing the special use permit, the landowners may be able to smell odors from the project on their property; this was sufficient for the county board of commissioners to determine that the landowners' property interest may be adversely affected if the special use permit was granted. *Davisco Foods Int'l, Inc. v. Gooding County*, 141 Idaho 784, 118 P.3d 116 (2005).

This section did not provide any right for a dairy to obtain judicial review of the county's ordinance changing a county comprehensive plan map where the amendment to the comprehensive plan map did not authorize development and, thus, the dairy was not an affected person under the statute. *Giltner Dairy, LLC v. Jerome County*, 145 Idaho 630, 181 P.3d 1238 (2008).

Neighboring property owner was an affected person entitled to seek judicial review of approval of a planned unit development, because he could be adversely affected by the approval of a development that would have higher housing densities than permitted by the underlying zoning district. *Johnson v. Blaine County*, 146 Idaho 916, 204 P.3d 1127 (2009).

Group of neighbors were not entitled to judicial review of a county board's decision to allow amendment of a comprehensive county plan, designating the area in which they owned land as rural, because the redesignation of the area was not a permit authorizing or prohibiting development; therefore, the neighbors were not "affected persons" under this section. *Neighbors for Responsible Growth v. Kootenai County*, 147 Idaho 173, 207 P.3d 149 (2009).

Declaratory Judgment.

While a legislative zoning decision is not subject to direct judicial review, it nonetheless may be scrutinized by means of collateral actions such as declaratory actions. In such instances the decision will not be disturbed absent a clear showing that it is confiscatory, arbitrary, unreasonable or capricious. *Burt v. City of Idaho Falls*, 105 Idaho 65, 665 P.2d 1075 (1983).

Exhaustion of Administrative Remedies.

Landowners' failure to exhaust administrative remedies deprived the district court of jurisdiction over their claim for declaratory relief to determine whether their private landing field and hangar were permissible uses of their property under a local zoning ordinance. The landowners could have applied for a text amendment to the ordinance, or zone change and conditional use permit to try to properly permit the use. [Regan v. Kootenai County](#), 140 Idaho 721, 100 P.3d 615 (2004).

Developers' suit, asserting claims of illegal impact fees and inverse condemnation based on increased mitigation costs, was dismissed, because the developers failed to exhaust administrative remedies under § 67-6519(4) and this section and because they did not seek judicial review or request a regulatory taking analysis as provided in § 67-6512(a). [Buckskin Props. v. Valley County](#), 154 Idaho 486, 300 P.3d 18 (2013).

Judicial Review.

A transcribable record is indispensable to meaningful judicial review of rezoning proceedings where the sufficiency of notice, adequacy of opportunity to present or to rebut evidence, or the existence of evidence supporting the agency's findings may be put at issue. [Gay v. County Comm'rs](#), 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Where no transcribable record was kept of a county rezoning hearing and because, without such a record, a reviewing court could not determine that the interested parties received notice of all meetings at which information concerning the rezoning request was received, or that an opportunity to rebut such information was afforded, the county's decision authorizing the rezoning had to be set aside. [Gay v. County Comm'rs](#), 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

In the annexation of land by a city, in the subsequent amendment of the comprehensive plan and in the zoning of the annexed land, the city council acted in a legislative manner; such actions are not subject to direct judicial review. [Burt v. City of Idaho Falls](#), 105 Idaho 65, 665 P.2d 1075 (1983).

The proper procedure for a city challenging a decision of a zoning board is to file a petition for judicial review under paragraph (1) of this section and the trial court is limited to reviewing the factual record compiled in

proceedings before the zoning board. *City of Burley v. McCaslin Lumber Co.*, 107 Idaho 906, 693 P.2d 1108 (Ct. App. 1984).

The express provisions of § 67-6519 and paragraph (1)(d) of this section, limit a subdivision plat applicant appealing an adverse decision seeking judicial review of the city council's action pursuant to § 67-5215(b) to (g) (now repealed). *Curtis v. City of Ketchum*, 111 Idaho 27, 720 P.2d 210 (1986) (See § 67-5279).

The district court correctly held that applicant for a subdivision plat was precluded from challenging the city's actions with regard to the application because he failed to seek review of the city's action within 60 [now 28] days as required by § 67-6519. *Curtis v. City of Ketchum*, 111 Idaho 27, 720 P.2d 210 (1986).

Only after the exhaustion of remedies provided under this chapter and under local ordinances may an unsuccessful applicant for a permit or an affected person seek judicial review. *Palmer v. Board of County Comm'rs*, 117 Idaho 562, 790 P.2d 343 (1990).

This statute calls for exhaustion of administrative remedies under local ordinances and for application of only those Administrative Procedures Act provisions that govern judicial review. Nothing in (1)(d) suggests a legislative intent to incorporate into this chapter portions of the Administrative Procedures Act authorizing state agency proceedings that occur prior to the initiation of judicial review. *Arthur v. Shoshone County*, 133 Idaho 854, 993 P.2d 617 (Ct. App. 2000).

Provisions of the Administrative Procedures Act extending the time for a judicial review petition when a motion for reconsideration has been filed are inapplicable, and a county ordinance purporting to allow sixty days for a judicial review petition was preempted by state law that established a twenty-eight-day time limit. *Arthur v. Shoshone County*, 133 Idaho 854, 993 P.2d 617 (Ct. App. 2000).

District court's summary judgment, voiding approval of a conditional use permit to develop a gravel mine and asphalt plant that was granted by the planning and development council, was reversed, as the board of county commissioners was the designated decision-making body for appeals of decisions of the planning and development council, and the district court

should have applied the doctrine of exhaustion to dismiss the landowner's complaint. *White v. Bannock County Comm'rs*, 139 Idaho 396, 80 P.3d 332 (2003).

Both § 67-6519 and this section provide for judicial review only after all remedies have been exhausted under local ordinances. Because a landowner failed to exhaust his administrative remedies before filing his petition for judicial review of a city's zoning decision, the appellate court had to vacate the decision of the trial court and remand the case with instructions to dismiss the petition for judicial review. *Rollins v. Blaine County*, 147 Idaho 729, 215 P.3d 449 (2009).

Paragraph (1)(d) does not provide a basis for judicial review of a county board of commissioners' denial of an application for amendment to the comprehensive plan. *Burns Holdings, LLC v. Madison County Bd.*, 147 Idaho 660, 214 P.3d 646 (2009).

A land owner may not appeal, under § 31-1506, the granting of a request for rezoning by a county in favor of an adjacent land owner. Any judicial review of a such a request should be governed by the provisions of this chapter, and specifically this section. *Giltner Dairy, LLC v. Jerome County*, 150 Idaho 559, 249 P.3d 358 (2011).

Because landowners did not appeal the denial of a permit or the conditions attached to a permit, they did not have the right to seek judicial review of administrative proceedings enforcing a zoning ordinance. *Stafford v. Kootenai County*, 150 Idaho 841, 252 P.3d 1259 (2011).

Landowner had standing to file a petition for review because 1) he feared that allowing the neighboring landowners to construct new homes on their properties would cause the occupants to use the road on his land more frequently, potentially exceeding the scope of any preexisting easements and increasing the risk that someone could allow his livestock to escape through an open gate; and 2) he feared that emergency vehicles might not be able to reach his neighbors' properties, potentially preventing them from combating a fire that could spread to his land. *Hawkins v. Bonneville County Bd. of Comm'rs*, 151 Idaho 228, 254 P.3d 1224 (2011).

Supreme court had jurisdiction to decide a neighboring landowner's challenge to a county's decision to grant a utility company's application for

a conditional rezone. This section grants jurisdiction to the district court and the supreme court to conduct judicial review of that decision, the landowner's argument regarding the validity of the company's comprehensive plan was merely a subsidiary issue related to its challenge to the conditional rezone. *Neighbors for the Pres. of the Big & Little Creek Cmty. v. Bd. of County Comm'rs*, 159 Idaho 182, 358 P.3d 67 (2015).

Paragraph (1)(d) affords judicial review to an affected person aggrieved by a final decision. An "affected person" is one having a bona fide interest in real property which may be adversely affected by the approval, denial, or failure to act upon an application for a subdivision, variance, special use permit, and such other similar applications required or authorized pursuant to the chapter. However, building permit applications are not included in "such other similar applications required or authorized pursuant to the chapter" in paragraph (1)(a)(i), so paragraph (1)(d) does not provide judicial review of the denial of such an application. *Arnold v. City of Stanley*, 162 Idaho 115, 394 P.3d 1160 (2017).

— Timely Filing.

In order for downstream landowners to be entitled to actual notice under § 67-6512(b), the commission was first required to find that their property would be substantially impacted by the issuance of the permit; and as commission made no such finding, since downstream landowners raised no other issues with regard to the sufficiency of the notice of hearing, their appeal to the board and petition to review filed with the district court were not timely filed. *Enright v. Blaine County*, 127 Idaho 498, 903 P.2d 87 (1995).

Appeal from the granting of a livestock confinement permit should not have been dismissed as untimely because county commissioners caused confusion regarding the 28-day time period in their decision, and it was reasonable for an objector to read the decision as setting a certain date as the final date of appeal. *Halper v. Jerome County*, 143 Idaho 691, 152 P.3d 562 (2007).

Procedural Requirements.

Notice, opportunity to present and to rebut evidence, preparation of specific findings of fact and conclusions of law, and the keeping of a

transcribable record comprise a common core of procedural due process requirements, constitutionally mandated in all cases where zoning authorities are requested to change the land use authorized for a particular parcel of property. *Gay v. County Comm'rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Review of Commission Decision.

Upholding a city council's denial of an application for a special use permit to erect a television transmission tower despite the planning and zoning commission's prior approval, the appellate court held that the council retained the right to review decisions of the commission de novo, and since it was not acting in a quasi-judicial capacity when doing so, due process was not required. *Marcia T. Turner, L.L.C. v. City of Twin Falls*, 144 Idaho 203, 159 P.3d 840 (2007).

Scope of Review.

It is by now a well established rule in Idaho that review on appeal is limited to those issues raised before the lower tribunal and that an appellate court will not decide issues presented for the first time on appeal; that this rule is equally applicable to appeals of zoning decisions is made clear by paragraph (1)(d) of this section which states that judicial review of the board's decision is governed by chapter 52, title 67, Idaho Code, which confines the review by the district court to the record. *Balser v. Kootenai County Bd. of Comm'rs*, 110 Idaho 37, 714 P.2d 6 (1986).

Since city council's approval of preliminary plat application was not final approval for the development of the subdivision, which would require approval of the final application and flood plain permit application, it was not a final decision that was subject to judicial review. *Bothwell v. City of Eagle*, 130 Idaho 174, 938 P.2d 1212 (1997).

Standing.

Organization lacked standing to challenge the issuance of a permit to operate a livestock confinement operation (LCO), where there was no specific allegation that any identified member of the organization had standing to sue in the member's own right and no member lived in proximity to the proposed LCO site or would have been harmed by its

presence. *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

Individuals who lived within one mile a proposed livestock confinement operation had standing to challenge the issuance of a permit for the operation, because evidence was presented to the board of county commissioners regarding the probable compromised resale value of existing homes in the area, of an increase in unpleasant odors, and of an increase in possible health concerns. Each of these could be categorized as threatened harm. *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

Zoning.

Under this section, the district court was empowered to review on appeal a rezoning decision of the county commissioners. *Love v. Board of County Comm'rs*, 105 Idaho 558, 671 P.2d 471 (1983).

Landowners in the vicinity would be “affected,” within the meaning of this section, by the activities outlined in application for conditional use permit for commercial air base where the area had been zoned “recreational open space” and the enjoyment and value of properties in the area could be impacted by airplane and helicopter traffic to and from a nearby commercial air transport base. *Glengary-Gamlin Protective Ass'n v. Bonner County Bd. of Comm'rs*, 106 Idaho 84, 675 P.2d 344 (Ct. App. 1983).

Landowner's association had organizational standing to pursue complaint for judicial review of decision partially granting conditional use permit for commercial air transport base where the organization's members had standing to sue in their own right, the interests which the organization sought to protect were germane to the organization's purpose to resist perceived encroachments upon the interests of property owners and neither the claim asserted, nor the relief requested, required the participation of the individual members. *Glengary-Gamlin Protective Ass'n v. Bonner County Bd. of Comm'rs*, 106 Idaho 84, 675 P.2d 344 (Ct. App. 1983).

Cited *Daley v. Blaine County*, 108 Idaho 614, 701 P.2d 234 (1985); *Lowery v. Board of County Comm'rs*, 117 Idaho 1079, 793 P.2d 1251 (1990); *Black v. Young*, 122 Idaho 302, 834 P.2d 304 (1992); *Foster v. City of St. Anthony*, 122 Idaho 883, 841 P.2d 413 (1992); *Angstman v. City of*

Boise, 128 Idaho 575, 917 P.2d 409 (Ct. App. 1996); Idaho Historic Preservation Council, Inc. v. Boise City Council, 134 Idaho 651, 8 P.3d 646 (2000); Blaha v. Board of Ada County Comm'rs, 134 Idaho 770, 9 P.3d 1236 (2000); Canal/Norcrest/Columbus Action Comm. v. City of Boise, 136 Idaho 666, 39 P.3d 606 (2001); County Residents Against Pollution from Septage Sludge v. Bonner County, 138 Idaho 585, 67 P.3d 64 (2003); Eacret v. Bonner County, 139 Idaho 780, 86 P.3d 494 (2004); Cowan v. Bd. of Comm'rs, 143 Idaho 501, 148 P.3d 1247 (2006); Highlands Dev. Corp. v. City of Boise, 145 Idaho 958, 188 P.3d 900 (2008); Taylor v. Canyon County Bd. of Comm'rs, 147 Idaho 424, 210 P.3d 532 (2009).

RESEARCH REFERENCES

A.L.R. — Propriety of federal court's abstention, under *Younger v. Harris*, 401 U.S. 37, 91 S. Ct. 756, 27 L. Ed. 2d 669 (1971), to avoid interference in ongoing state proceedings involving land use and zoning. 55 A.L.R. Fed 2d 261.

§ 67-6522. Combining of permits — Permits to assessor. — Where practical, the governing board or zoning or planning and zoning commission may combine related permits for the convenience of applicants. State and federal agencies should make every effort to combine or coordinate related permits with the local governing board or commission. In no event shall the governing board by local ordinance enact provisions that abrogate the statutory authority of a public health district, state and/or federal agency. Appropriate permits as defined by local ordinance shall be forwarded to the county assessor.

History.

I.C., § 67-6522, as added by 1975, ch. 188, p. 515; am. 2013, ch. 216, § 2, p. 507.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 216, inserted the next-to-last sentence.

§ 67-6523. Emergency ordinances and moratoriums. — If a governing board finds that an imminent peril to the public health, safety, or welfare requires adoption of ordinances as required or authorized under this chapter, or adoption of a moratorium upon the issuance of selected classes of permits, or both, it shall state in writing its reasons for that finding. The governing board may then proceed without recommendation of a commission, upon any abbreviated notice of hearing that it finds practical, to adopt the ordinance or moratorium. An emergency ordinance or moratorium may be effective for a period of not longer than one hundred eighty-two (182) days. Restrictions established by an emergency ordinance or moratorium may not be imposed for consecutive periods. Further, an intervening period of not less than one (1) year shall exist between an emergency ordinance or moratorium and reinstatement of the same. To sustain restrictions established by an emergency ordinance or moratorium beyond the one hundred eighty-two (182) day period, a governing board must adopt an interim or regular ordinance, following the notice and hearing procedures provided in section 67-6509, Idaho Code.

History.

I.C., § 67-6523, as added by 1975, ch. 188, § 2, p. 515; am. 2003, ch. 142, § 6, p. 410.

OPINIONS OF ATTORNEY GENERAL

School Trust Lands.

The Idaho state land board need not abide by the county zoning ordinance in managing state lands for school trust purposes, as the constitutional endowment mandate has precedence; but the board, in its discretion, may look to the land use restrictions specified by the county ordinance for advice and recommendation in determining the future use and administering of these lands. OAG 91-3.

§ 67-6524. Interim ordinances and moratoriums. — If a governing board finds that a plan, a plan component, or an amendment to a plan is being prepared for its jurisdiction, it may adopt interim ordinances as required or authorized under this chapter, following the notice and hearing procedures provided in section 67-6509, Idaho Code. The governing board may also adopt an interim moratorium upon the issuance of selected classes of permits if, in addition to the foregoing, the governing board finds and states in writing that an imminent peril to the public health, safety, or welfare requires the adoption of an interim moratorium. An interim ordinance or moratorium shall state a definite period of time, not to exceed one (1) calendar year, when it shall be in full force and effect. To sustain restrictions established by an interim ordinance or moratorium, a governing board must adopt a regular ordinance, following the notice and hearing procedures provided in section 67-6509, Idaho Code.

History.

I.C., § 67-6524, as added by 1975, ch. 188, § 2, p. 515; am. 2003, ch. 142, § 7, p. 410.

OPINIONS OF ATTORNEY GENERAL

School Trust Lands.

The Idaho state land board need not abide by the county zoning ordinance in managing state lands for school trust purposes, as the constitutional endowment mandate has precedence; but the board, in its discretion, may look to the land use restrictions specified by the county ordinance for advice and recommendation in determining the future use and administering of these lands. OAG 91-3.

§ 67-6525. Plan and zoning ordinance changes upon annexation of unincorporated area. — Prior to annexation of an unincorporated area, a city council shall request and receive a recommendation from the planning and zoning commission, or the planning commission and the zoning commission, on the proposed plan and zoning ordinance changes for the unincorporated area. Each commission and the city council shall follow the notice and hearing procedures provided in section 67-6509, Idaho Code. Concurrently or immediately following the adoption of an ordinance of annexation, the city council shall amend the plan and zoning ordinance.

History.

I.C., § 67-6525, as added by 1975, ch. 188, § 2, p. 515.

CASE NOTES

Judicial review.

Notice and hearing provisions.

Unzoned land.

When amendment unnecessary.

Judicial Review.

Corporation's appeal of a city's zoning and annexation ordinance was dismissed because applicable statute did not grant any right of judicial review regarding either the annexation decision or the zoning decision. *Highlands Dev. Corp. v. City of Boise*, 145 Idaho 958, 188 P.3d 900 (2008).

District court properly dismissed appellant residents' petition for judicial review of respondent city's decision to annex land. There was no authorization of judicial review of a category A annexation under § 50-222, or under this section. *In re City of Shelley*, 151 Idaho 289, 255 P.3d 1175 (2011).

Notice and Hearing Provisions.

By specifically prescribing the hearing and notice requirements to be followed in the annexation and zoning of newly incorporated areas, the

legislature has clearly expressed its intention that the notice and hearing provisions of § 67-6511 for zoning district boundary changes are inapplicable to annexation proceedings. *City of Lewiston v. Bergamo*, 119 Idaho 221, 804 P.2d 1352 (Ct. App. 1990).

Unzoned Land.

This chapter has not abrogated the rule that if an annexation ordinance is silent as to zoning, the annexed land comes into the city as unzoned land, although this section requires amendment of the comprehensive plan and zoning ordinance concurrently or immediately following annexation. *Burt v. City of Idaho Falls*, 105 Idaho 65, 665 P.2d 1075 (1983).

Where the annexation ordinance was silent as to the zoning of the annexed land, it came into the city as unzoned land and the annexed land was not rezoned by the city but initially zoned. *Burt v. City of Idaho Falls*, 105 Idaho 65, 665 P.2d 1075 (1983).

When Amendment Unnecessary.

Where an annexation ordinance did not conflict with the comprehensive city plan, the failure of the city council to amend the plan concurrently with or immediately after passage of the ordinance did not violate this section, since there was no reason for the council to amend the plan absent a conflict. *State ex rel. Roark v. City of Hailey*, 102 Idaho 511, 633 P.2d 576 (1981).

Cited *Coeur d'Alene Indus. Park Property Owners Ass'n v. City of Coeur d'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985).

§ 67-6526. Areas of city impact — Negotiation procedure. — (a) The governing board of each county and each city therein shall adopt by ordinance following the notice and hearing procedures provided in section 67-6509, Idaho Code, a map identifying an area of city impact within the unincorporated area of the county. A separate ordinance providing for application of plans and ordinances for the area of city impact shall be adopted. Subject to the provisions of section 50-222, Idaho Code, an area of city impact must be established before a city may annex adjacent territory. This separate ordinance shall provide for one (1) of the following:

- (1) Application of the city plan and ordinances adopted under this chapter to the area of city impact; or
- (2) Application of the county plan and ordinances adopted under this chapter to the area of city impact; or
- (3) Application of any mutually agreed upon plan and ordinances adopted under this chapter to the area of city impact.

Areas of city impact, together with plan and ordinance requirements, may cross county boundaries by agreement of the city and county concerned if the city is within three (3) miles of the adjoining county.

(b) If the requirements of [section 67-6526\(a\), Idaho Code](#), have not been met, either the city or the county may demand compliance with this section by providing written notice to the other of said demand for compliance. Once a demand has been made, the city shall select its representative as hereinafter provided, within thirty (30) days of said demand, and the process set forth in this subsection shall commence. The county commissioners for the county concerned, together with three (3) elected city officials designated by the mayor of the city and confirmed by the council, shall, within thirty (30) days after the city officials have been confirmed by the council, select three (3) city or county residents. These nine (9) persons shall, by majority vote, recommend to the city and county governing boards an area of city impact together with plan and ordinance requirements. The recommendations shall be submitted to the governing boards within one hundred eighty (180) days after the selection of the three (3) members at

large and shall be acted upon by the governing boards within sixty (60) days of receipt. If the city or county fails to enact ordinances providing for an area of city impact, plan, and ordinance requirements, either the city or county may seek a declaratory judgment from the district court identifying the area of city impact, and plan and ordinance requirements. In defining an area of city impact, the following factors shall be considered: (1) trade area; (2) geographic factors; and (3) areas that can reasonably be expected to be annexed to the city in the future.

(c) If areas of city impact overlap, the cities involved shall negotiate boundary adjustments to be recommended to the respective city councils. If the cities cannot reach agreement, the board of county commissioners shall, upon a request from either city, within thirty (30) days, recommend adjustments to the areas of city impact which shall be adopted by ordinance by the cities following the notice and hearing procedures provided in [section 67-6509, Idaho Code](#). If any city objects to the recommendation of the board of county commissioners, the county shall conduct an election, subject to the provisions of [section 34-106, Idaho Code](#), and establish polling places for the purpose of submitting to the qualified electors residing in the overlapping impact area, the question of which area of city impact the electors wish to reside. The results of the election shall be conclusive and binding, and no further proceedings shall be entertained by the board of county commissioners, and the decision shall not be appealable by either city involved. The clerk of the board of county commissioners shall by abstract of the results of the election, certify that fact, record the same and transmit copies of the original abstract of the result of the election to the clerk of the involved cities.

(d) Areas of city impact, plan, and ordinance requirements shall remain fixed until both governing boards agree to renegotiate. In the event the city and county cannot agree, the judicial review process of subsection (b) of this section shall apply. Renegotiations shall begin within thirty (30) days after written request by the city or county and shall follow the procedures for original negotiation provided in this section.

(e) Prior to negotiation or renegotiation of areas of city impact, plan, and ordinance requirements, the governing boards shall submit the questions to the planning, zoning, or planning and zoning commission for recommendation. Each commission shall have a reasonable time fixed by

the governing board to make its recommendations to the governing board. The governing boards shall undertake a review at least every ten (10) years of the city impact plan and ordinance requirements to determine whether renegotiations are in the best interests of the citizenry.

(f) This section shall not preclude growth and development in areas of any county within the state of Idaho which are not within the areas of city impact provided for herein.

(g) If the area of impact has been delimited pursuant to the provisions of subsection (a)(1) of this section, persons living within the delimited area of impact shall be entitled to representation on the planning, zoning, or the planning and zoning commission of the city of impact. Such representation shall as nearly as possible reflect the proportion of population living within the city as opposed to the population living within the areas of impact for that city. To achieve such proportional representation, membership of the planning, zoning or planning and zoning commission, may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of [section 67-6504, Idaho Code](#). In instances where a city has combined either or both of its planning and zoning functions with the county, representation on the resulting joint planning, zoning or planning and zoning commission shall as nearly as possible reflect the proportion of population living within the impacted city, the area of city impact outside the city, and the remaining unincorporated area of the county. Membership on such a joint planning, zoning or planning and zoning commission may exceed twelve (12) persons, notwithstanding the provisions of subsection (a) of [section 67-6504, Idaho Code](#).

History.

[I.C., § 67-6526](#), as added by 1975, ch. 188, § 2, p. 515; am. 1977, ch. 155, § 1, p. 396; 1979, ch. 87, § 1, p. 212; am. 1993, ch. 55, § 1, p. 150; am. 1995, ch. 118, § 97, p. 417; am. 1996, ch. 116, § 2, p. 427; am. 1999, ch. 251, § 1, p. 650; am. 2002, ch. 333, § 6, p. 939.

STATUTORY NOTES

Effective Dates.

Section 4 of S.L. 1993, ch. 55 read: “An emergency existing therefor, which emergency is hereby declared to exist, Section 1 of this act shall be in full force and effect on and after passage and approval. Sections 2 and 3 of this act shall be in full force and effect on and after January 1, 1995.” Approved March 17, 1993.

Section 3 of S.L. 1996, ch. 116 declared an emergency. Approved March 6, 1996.

CASE NOTES

Constitutional challenge.

Effect of 1979 amendment.

Negotiation.

Special election.

Standing to challenge creation of impact area.

Subdivision application.

Zoning decisions.

Constitutional Challenge.

City which sought to challenge constitutionality of this section lacked standing to assert the rights of property owners in the overlapping impact area and the city itself has no vested rights entitling it to present such challenge. *City of Garden City v. City of Boise*, 104 Idaho 512, 660 P.2d 1355 (1983).

Where city was availing itself of the benefits of this chapter by establishing impact areas, it could not simultaneously contend that the chapter was unconstitutional. *City of Garden City v. City of Boise*, 104 Idaho 512, 660 P.2d 1355 (1983).

Effect of 1979 Amendment.

In amending this section in 1979, the legislature exercised its power to modify a municipality's powers by substituting the electoral process for the declaratory judgment action and such amendment could be applied

retroactively, since it did not affect any vested rights of city. *City of Garden City v. City of Boise*, 104 Idaho 512, 660 P.2d 1355 (1983).

Negotiation.

The allocation of powers between cities and counties is a legislative task; the legislature has chosen not to make negotiation with the county, under this section, a compulsory prerequisite for annexation by a city under § 50-222. *Coeur d'Alene Indus. Park Property Owners Ass'n v. City of Coeur d'Alene*, 108 Idaho 843, 702 P.2d 881 (Ct. App. 1985).

Special Election.

The substitution, by the 1979 amendment to this section, of the electoral process for declaratory judgment proceedings was not an unlawful delegation of police powers; since all electors within the impact area are permitted to vote, no power is unconstitutionally delegated to one neighbor to determine the limitation on another's use of his land. *City of Garden City v. City of Boise*, 104 Idaho 512, 660 P.2d 1355 (1983).

Standing to Challenge Creation of Impact Area.

Corporate landowner had no standing to challenge the validity of an agreement between city and county establishing a city impact area, where landowner neither alleged nor offered proof that inclusion of its property within the city impact area would inconvenience it, place new limitations upon its use or enjoyment of the land, or cause economic injury. *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 875 P.2d 236 (Ct. App. 1994).

Subdivision Application.

The power to approve a subdivision application in impact area resided exclusively with county, and city's action in reviewing the subdivision application was advisory only, and not a prerequisite to action by the county. *Blaha v. Board of Ada County Comm'rs*, 134 Idaho 770, 9 P.3d 1236 (2000).

Zoning Decisions.

While a county and a city can agree that the city comprehensive plan and zoning ordinances will apply in the unincorporated area of the county that is within the city's area of city impact, the county must adopt an ordinance

providing for the application of the city plan and zoning ordinances in the area of city impact and the county cannot delegate to the city the power to make zoning decisions beyond the city's limits. *Burns Holdings, LLC v. Teton County Bd. of Comm'rs*, 152 Idaho 440, 272 P.3d 412 (2012).

Cited *Hauser Lake Rod & Gun Club, Inc. v. City of Hauser*, 162 Idaho 260, 396 P.3d 689 (2017).

OPINIONS OF ATTORNEY GENERAL

Legislative Power.

Only the board of county commissioners may exercise legislative powers in the unincorporated areas of the county. An ordinance enacted by a city pursuant to subsection (a)(1) of this section is not effective in the unincorporated area of impact until the county, by ordinance, adopts the terms of the city ordinance. OAG 95-1.

In reading subsection (a) of this section in conjunction with all of Chapter 65, and in particular §§ 67-6504, 67-6505, and the remainder of this section, it is clear that the ordinance governing the area of impact must be adopted by both the city council and the board of county commissioners. Subdivision (a)(1) merely states that a plan drafted by a city may be applied to the area of impact. The application of the city's plan to the area of impact only occurs when ordinances adopting such plan are enacted by the city council and the board of county commissioners. Reading subdivision (a)(1) as giving cities the power to act unilaterally in adopting ordinances governing unincorporated areas of impact would render it unconstitutional as violating Idaho *Const., Art. XII, § 2*. OAG 95-1.

§ 67-6527. Violations — Criminal penalties — Enforcement. — A governing board may provide by ordinance for the enforcement of this chapter or any ordinance or regulation made pursuant to this chapter. A violation of any such ordinance or regulation may be declared a misdemeanor and the governing board may provide by ordinance for punishment thereof by fine or imprisonment or by both. Local ordinances adopted pursuant to authority granted by this chapter may be enforced by the imposition of infraction penalties. Except that where property has been made nonconforming by the exercise of eminent domain it shall not be a violation and no penalty, either civil or criminal, shall result. In addition, whenever it appears to a governing board that any person has engaged or is about to engage in any act or practice violating any provision of this chapter or an ordinance or regulation enacted pursuant to this chapter, the governing board may institute a civil action in the district court to enforce compliance with this chapter or any ordinance or regulation enacted hereunder. Upon a showing that a person has engaged or is about to engage in an act or practice constituting a violation of this chapter or ordinance or regulation enacted hereunder, a permanent or temporary injunction, restraining order, or such other relief as the court deems appropriate shall be granted. The governing board shall not be required to furnish bond.

History.

I.C., § 67-6527, as added by 1975, ch. 188, § 2, p. 515; am. 1999, ch. 396, § 15, p. 1099.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Punishment for infraction, § 18-113A.

CASE NOTES

Cited State ex rel. Moore v. Bastian, 98 Idaho 888, 575 P.2d 486 (1978).

§ 67-6528. Applicability of ordinances. — The state of Idaho, and all its agencies, boards, departments, institutions, and local special purpose districts, shall comply with all plans and ordinances adopted under this chapter unless otherwise provided by law. In adoption and implementation of the plan and ordinances, the governing board or commission shall take into account the plans and needs of the state of Idaho and all agencies, boards, departments, institutions, and local special purpose districts. The provisions of plans and ordinances enacted pursuant to this chapter shall not apply to transportation systems of statewide importance as may be determined by the Idaho transportation board. The Idaho transportation board shall consult with the local agencies affected specifically on site plans and design of transportation systems within local jurisdictions. If a public utility has been ordered or permitted by specific order, pursuant to title 61, Idaho Code, to do or refrain from doing an act by the public utilities commission, any action or order of a governmental agency pursuant to titles 31, 50 or 67, Idaho Code, in conflict with said public utilities commission order, shall be insofar as it is in conflict, null and void if prior to entering said order, the public utilities commission has given the affected governmental agency an opportunity to appear before or consult with the public utilities commission with respect to such conflict.

History.

I.C., § 67-6528, as added by 1975, ch. 188, § 2, p. 515.

STATUTORY NOTES

Cross References.

Idaho transportation board, § 40-301 et seq.

Public utilities commission, § 61-201 et seq.

CASE NOTES

Highway Access.

An ordinance which limits access to a state highway from new developments, and which was drawn up with the cooperation of the Idaho transportation department and acknowledges that department's ultimate control over access to and on state highways, does not usurp the authority of the department. *Wylie v. State*, 151 Idaho 26, 253 P.3d 700 (2011).

Cited *State ex rel. Kempthorne v. Blaine County*, 139 Idaho 348, 79 P.3d 707 (2003).

OPINIONS OF ATTORNEY GENERAL

School Trust Lands.

The Idaho state land board need not abide by the county zoning ordinance in managing state lands for school trust purposes, as the constitutional endowment mandate has precedence; but the board, in its discretion, may look to the land use restrictions specified by the county ordinance for advice and recommendation in determining the future use and administering of these lands. OAG 91-3.

State and Local Cooperation.

In enacting this chapter, it was the legislature's intent that local governments must take steps to minimize conflicts between local zoning ordinances and the land use plans of state agencies, as shown by the provisions of this section. OAG 92-5.

In order to ensure compliance with the authorities delegated under this chapter, local governments should work closely with state agencies when enacting zoning ordinances that apply to lands under state control. OAG 92-5.

State Regulations.

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

§ 67-6529. Applicability to agricultural land — Counties may regulate siting of certain animal operations and facilities. — (1) No power granted hereby shall be construed to empower a board of county commissioners to enact any ordinance or resolution which deprives any owner of full and complete use of agricultural land for production of any agricultural product. Agricultural land shall be defined by local ordinance or resolution.

(2) Notwithstanding any provision of law to the contrary, a board of county commissioners shall enact ordinances and resolutions to regulate the siting of large confined animal feeding operations and facilities, as they shall be defined by the board, provided however, that the definition of a confined animal feeding operation shall not be less restrictive than the definition contained in [section 67-6529C, Idaho Code](#), including the approval or rejection of sites for the operations and facilities. At a minimum, a county's ordinance or resolution shall provide that the board of county commissioners shall hold at least one (1) public hearing affording the public an opportunity to comment on each proposed site before the siting of such facility. Several sites may be considered at any one (1) public hearing. Only members of the public with their primary residence within a one (1) mile radius of a proposed site may provide comment at the hearing. However, this distance may be increased by the board. A record of each hearing and comments received shall be made by the board. The comments shall be duly considered by the board when deciding whether to approve or reject a proposed site. A board of county commissioners may reject a site regardless of the approval or rejection of the site by a state agency.

History.

[I.C., § 67-6529](#), as added by 1975, ch. 188, § 2, p. 515; am. 2000, ch. 217, § 1, p. 605; am. 2003, ch. 297, § 1, p. 805.

STATUTORY NOTES

Compiler's Notes.

Section 3 of S.L. 1975, ch. 188, read: “The provisions of this act are hereby declared to be severable, and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 4 of S.L. 1975, ch. 188 provided that the act should take effect on and after July 1, 1975.

Section 2 of S.L. 2000, ch. 217 declared an emergency. Approved April 12, 2000.

CASE NOTES

Constitutionality.

Construction.

Deprivation of use.

Procedural due process.

Standing.

Constitutionality.

One-mile exclusion in subsection (2), limiting required participation at a public hearing for the issuance of a permit to operate a livestock confinement operation (LCO) to those having a primary residence within one mile of the proposed LCO site, did not violate parties’ due process or equal protection rights, as the one mile radius limitation is rationally related to a legitimate governmental purpose. *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm’rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

Construction.

This section must be construed harmoniously with other provisions of this chapter to the extent reasonably possible and must also be construed to give effect to the legislative intent and purpose in enacting this chapter. *Olson v. Ada County*, 105 Idaho 18, 665 P.2d 717 (1983).

When this section is read in the context of the other sections of this chapter, and in light of the purposes and objectives set forth in § 67-6502, it is clear that the legislature did not intend to give agricultural land allegedly being used for agricultural purposes a carte blanche exemption from all county zoning ordinances. *Olson v. Ada County*, 105 Idaho 18, 665 P.2d 717 (1983).

Deprivation of Use.

Every ordinance which imposes restrictions upon the use of land does not constitute a per se violation of this section; regulations which do not interfere with the use of agricultural land for the production of agricultural products may lawfully be applied to restrain or restrict a use that would be otherwise inconsistent with local ordinances. The inquiry is whether the particular ordinance or regulation in question deprives an owner of the “full and complete use of agricultural land for production of any agricultural product.” *Olson v. Ada County*, 105 Idaho 18, 665 P.2d 717 (1983).

Where there was substantial and competent evidence in the record to support the board of county commissioners’ finding that ten-acre parcel of land used for growing trees did not front on a public or private street as required by zoning ordinance, board’s decision denying zoning certificate permitting construction of residence on such property was affirmed since requirement of ordinance did not interfere with use of property for production of agricultural products. *Olson v. Ada County*, 105 Idaho 18, 665 P.2d 717 (1983).

Opponents of a grant of a conditional use permit to an applicant for the subdivision of the applicant’s farmland into residential lots were not deprived of the full and complete use of their agricultural land; although the opponents feared complaints from the new residents who might move into the area, the deed restrictions imposed prevented the new residents from enjoining the present agricultural uses so long as those uses were lawfully conducted. *Whitted v. Canyon County Bd. of Comm’rs*, 137 Idaho 118, 44 P.3d 1173 (2002).

Procedural Due Process.

Procedural due process rights of parties that objected to the issuance of a permit for the operation of a livestock confinement operation were not

violated by a board of county commissioners, where the parties were provided with notice and an opportunity to be heard at a hearing before the board, notice of the procedures for the hearing was mailed to the property owners within a one-mile radius of the proposed site and published in the local newspaper, and the parties were allotted four minutes for oral testimony before the board, along with one 8.5" x 11" single-sided sheet of paper as an exhibit (or two sheets if one chose not to testify). *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

Standing.

Organization lacked standing to challenge the issuance of a permit to operate a livestock confinement operation (LCO), where there was no specific allegation that any identified member of the organization had standing to sue in the member's own right and no member lived in proximity to the proposed LCO site or would have been harmed by its presence. *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

Individuals who lived within one mile a proposed livestock confinement operation had standing to challenge the issuance of a permit for the operation, because evidence was presented to the board of county commissioners regarding the probable compromised resale value of existing homes in the area, of an increase in unpleasant odors, and of an increase in possible health concerns. Each of these could be categorized as threatened harm. *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

OPINIONS OF ATTORNEY GENERAL

Joint Supervision.

Because the legislature has authorized both the counties and the state to regulate confined animal feeding operations (CAFOs), and because these authorities overlap, it is unlikely that a court would conclude the state has completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

§ 67-6529A. Short title. — This act shall be referred to as the “Site Advisory Team Suitability Determination Act.”

History.

I.C., § 67-6529A, as added by 2001, ch. 381, § 1, p. 1336.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 2001, Chapter 381, which is codified as § 67-6529A to § 67-6529G.

OPINIONS OF ATTORNEY GENERAL

Joint Supervision.

Because the legislature has authorized both the counties and the state to regulate confined animal feeding operations (CAFOs), and because these authorities overlap, it is unlikely that a court would conclude the state has completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

§ 67-6529B. Legislative findings and purposes. — The legislature finds that:

(1) Confined animal feeding operations increase social and environmental impacts in areas where these facilities are located;

(2) The siting of confined animal feeding operations is a complex and technically difficult undertaking requiring assistance to counties and other units of local government as they exercise their land use planning authority;

(3) It is in the interest of the state of Idaho that state departments and agencies use their particular expertise to assist counties and other local governments in the environmental evaluation of appropriate sites for confined animal feeding operations.

History.

I.C., § 67-6529B, as added by 2001, ch. 381, § 2, p. 1336.

§ 67-6529C. Definitions. — As used in this act, the following definitions shall apply:

(1) “CAFO,” also referred to as “concentrated animal feeding operation” or “confined animal feeding operation,” means, for those counties that have requested a site suitability determination, a CAFO as defined in the applicable ordinance of the county wherein the CAFO is located. If the requesting county has not defined CAFO in its ordinances, CAFO means a lot or facility where the following conditions are met:

- (a) Animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety (90) consecutive days or more in any twelve-month period;
- (b) Crops, vegetation, forage growth or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility; and
- (c) The lot or facility is designed to confine or actually does confine as many as or more than the numbers of animals specified in any of the following categories: seven hundred (700) mature dairy cows, whether milked or dry; one thousand (1,000) veal calves; one thousand (1,000) cattle other than mature dairy cows or veal calves; two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more; ten thousand (10,000) swine each weighing less than fifty-five (55) pounds; five hundred (500) horses; ten thousand (10,000) sheep or lambs; or eighty-two thousand (82,000) chickens.

Two (2) or more concentrated animal feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes;

(2) “CAFO site advisory team” shall mean representatives of the Idaho state department of agriculture, Idaho department of environmental quality and Idaho department of water resources who review a site proposed for a CAFO, determine environmental risks and submit a suitability

determination to a county. The department of agriculture shall serve as the lead agency for the team;

(3) “Environmental risk” shall mean that risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team’s suitability determination report;

(4) “Suitability determination” shall mean that document created and submitted by the CAFO site advisory team after review and analysis of a proposed CAFO site that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks and sets forth any possible mitigation of risk.

History.

[I.C., § 67-6529C](#), as added by 2001, ch. 381, § 3, p. 1336; am. 2006, ch. 218, § 1, p. 653; am. 2011, ch. 180, § 1, p. 511.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.

Department of environmental quality, § 39-104.

Department of water resources, § 42-1701 et seq.

Amendments.

The 2006 amendment, by ch. 218, deleted former subsection (1), which was the definition for “Animal unit,” and made related redesignations; in subsection (1)(c), substituted the language beginning “as many as or more than the numbers of animals” for “an equivalent of one thousand (1,000) animal units or more”

The 2011 amendment, by ch. 180, rewrote the introductory paragraph in subsection (1), which formerly read: “CAFO,’ also referred to as ‘concentrated animal feeding operation’ or ‘confined animal feeding operation,’ means a lot or facility where the following conditions are met.”

Compiler’s Notes.

The term “this act” in the introductory paragraph refers to S.L. 2001, Chapter 381, which is codified as § 67-6529A to § 67-6529G.

Effective Dates.

Section 4 of S.L. 2011, ch. 180 declared an emergency. Approved April 5, 2011.

§ 67-6529D. Odor management plans — County request for suitability determination — Local regulation. — (1) Counties may require an applicant for siting of a CAFO to submit an odor management plan as part of their application.

(2) A board of county commissioners considering the siting of a CAFO may request the director of the department of agriculture to form a CAFO site advisory team to provide a suitability determination for the site.

(3) This act does not preempt local regulation of a CAFO.

History.

I.C., § 67-6529D, as added by 2001, ch. 381, § 4, p. 1336.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.

Compiler's Notes.

The term “this act” in subsection (3) refers to S.L. 2001, Chapter 381, which is codified as § 67-6529A to § 67-6529G.

CASE NOTES

County Ordinance.

Where a dairymen's association and a cattle association filed a complaint challenging the constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations (CAFOs), the supreme court held that Ordinance 90 did not violate Idaho Const., Art. XII, § 2. While § 42-101 provided that control over the appropriation of water was vested in the state, regulation of water quality by local government was not preempted under subsections (1) and (3) of this section. Because of Idaho's diverse geographical setting, water regulation at CAFOs does not call for a uniform regulatory scheme. *Idaho Dairymen's Ass'n v. Gooding County*, 148 Idaho 653, 227 P.3d 907 (2010).

§ 67-6529E. Process for county request — Contents of the request. —

(1) A board of county commissioners shall submit its request for a suitability determination by a site advisory team in writing to the director of the department of agriculture and shall support its request by the adoption of a resolution.

(2) Information in the request shall include, but not be limited to, the county's definition of "CAFO" as set forth in any applicable county ordinance, the relevant legal description and address of a proposed facility, the actual animal capacity of the facility, the types of animals to be confined at the proposed facility, all information related to water and water rights of the facility, any relevant vicinity maps and any other information relevant to the site that will assist the site advisory team in issuing its suitability determination. The board of county commissioners shall also provide the site advisory team with a copy of the odor management plan for the CAFO, if required to be submitted by the site applicant at the time of application.

History.

I.C., § 67-6529E, as added by 2001, ch. 381, § 5, p. 1336; am. 2006, ch. 218, § 2, p. 653; am. 2011, ch. 180, § 2, p. 511.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.

Amendments.

The 2006 amendment, by ch. 218, substituted "the actual animal capacity" for "the animal unit capacity" in subsection (2).

The 2011 amendment, by ch. 180, inserted "the county's definition of 'CAFO' as set forth in any applicable county ordinance" in subsection (2).

Effective Dates.

Section 4 of S.L. 2011, ch. 180 declared an emergency. Approved April 5, 2011.

§ 67-6529F. Department responsibilities — Authority to adopt rules and contract with other agencies. — (1) Upon the request of a board of county commissioners, the director of the department of agriculture shall form and chair a site advisory team specific to the request of the county. The director of the department of environmental quality and the director of the department of water resources shall provide full cooperation in the formation of the site advisory team.

(2) The CAFO site advisory team shall review the information provided by the county and shall visit the site as may be necessary in the judgment of the team.

(3) Within thirty (30) days of receiving the request for a suitability determination by a board of county commissioners, the CAFO site advisory team shall issue a written suitability determination and provide a copy in writing to the board of county commissioners that requested the review.

(4) Any director responsible for carrying out the purposes of this act may adopt administrative rules necessary or helpful to carry out those purposes.

(5) Any director responsible for carrying out the purposes of this act may enter into contracts, agreements, memorandums and other arrangements with federal, state and local agencies to carry out the purposes of this act.

History.

I.C., § 67-6529F, as added by 2001, ch. 381, § 6, p. 1336.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.

Department of environmental quality, § 39-104.

Department of water resources, § 42-1701 et seq.

Compiler's Notes.

The term “this act” in subsections (4) and (5) refers to S.L. 2001, Chapter 381, which is codified as § 67-6529A to § 67-6529G.

§ 67-6529G. Report of CAFO site advisory team — County action. —

The board of county commissioners requesting the suitability determination, upon receipt of the written suitability determination report by the CAFO site advisory team, may use the report as the county deems appropriate.

History.

I.C., § 67-6529G, as added by 2001, ch. 381, § 7, p. 1336.

§ 67-6529H. Site suitability determination — Application fees. — (1)

The board of county commissioners shall collect a CAFO site suitability fee from each applicant that will require a suitability determination by the site advisory team. The fee shall be one thousand two hundred dollars (\$1,200) plus mileage and per diem calculated based on distance traveled from the department of agriculture's Boise office to the proposed CAFO site. Mileage and per diem shall not exceed the established state rate existing at the time of the suitability determination.

(a) The board of county commissioners requesting the suitability determination shall forward the CAFO site suitability fee to the department of agriculture at the time of the request; (b) Whenever the cost of the suitability determination is less than one thousand two hundred dollars (\$1,200) plus per diem and mileage, the difference shall be refunded to the applicant by the department of agriculture; (c) The department of agriculture shall distribute the fee to the site advisory team on a pro rata basis according to time spent by team members on the suitability determination.

(2) Any applicant subject to the butterfat assessment pursuant to [section 37-407, Idaho Code](#), following the issuance of a permit is hereby exempt from paying the CAFO site suitability fee.

(3) Any applicant subject to a brand inspection fee pursuant to [section 25-1160, Idaho Code](#), is exempt from paying the CAFO site suitability fee.

History.

[I.C., § 67-6529H](#), as added by 2011, ch. 180, § 3, p. 511.

STATUTORY NOTES

Cross References.

Department of agriculture, § 22-101 et seq.

Regulation of per diem allowances, § 67-2004.

Effective Dates.

Section 4 of S.L. 2011, ch. 180 declared an emergency. Approved April 5, 2011.

§ 67-6530. Declaration of purpose. — The legislature declares that it is the policy of this state that persons with disabilities or elderly persons are entitled to live in normal residential surroundings and should not be excluded therefrom because of their disability or advanced age, and in order to achieve statewide implementation of such policy it is necessary to establish the statewide policy that the use of property for the care of eight (8) or fewer persons with disabilities or elderly persons is a residential use of such property for the purposes of local zoning.

History.

I.C., § 67-6530, as added by 1979, ch. 319, § 1, p. 858; am. 1993, ch. 18, § 1, p. 70; am. 2010, ch. 235, § 61, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, twice substituted “persons with disabilities” for “mentally and/or physically handicapped.”

CASE NOTES

Applicability.

Because the provisions of §§ 67-6531 and 67-6532 and this section apply to zoning and zoning-like cases, a water and sewer district must treat, and charge fees against, an assisted care facility of eight (8) or fewer unrelated persons as a single-family residence, despite the definitions used in the district’s ordinances. *Hayden Lake Rec. Water & Sewer Dist. v. Haydenview Cottage, LLC*, 835 F. Supp. 2d 965 (D. Idaho 2011).

§ 67-6531. Single family dwelling. — (1) For the purpose of any zoning law, ordinance or code, the classification “single family dwelling” shall include any group residence in which eight (8) or fewer unrelated persons with disabilities or elderly persons reside and who are supervised at the group residence in connection with their disability or age related infirmity.

(2) Resident staff, if employed, need not be related to each other or to any of the persons with disabilities or elderly persons residing in the group residence.

(3) No more than two (2) of such staff shall reside in the dwelling at any one time.

History.

I.C., § 67-6531, as added by 1979, ch. 319, § 1, p. 858; am. 1993, ch. 18, § 2, p. 70; am. 2008, ch. 123, § 1, p. 342; am. 2010, ch. 235, § 62, p. 542.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 123, in subsections (a) and (b), substituted “group residence” for “home”; and in subsection (a), added “at the group residence in connection with their handicap or age related infirmity.”

The 2010 amendment by ch. 235, redesignated the subsections numerically; in subsections (1) and (2), substituted “persons with disabilities” for “mentally and/or physically handicapped” and in subsection (1) substituted “disability” for “handicap”.

Effective Dates.

Section 3 of S.L. 2008, ch. 123 declared an emergency. Approved March 17, 2008.

CASE NOTES

Applicability.

Because the provisions of §§ 67-6530 and 67-6532 and this section apply to zoning and zoning-like cases, a water and sewer district must treat, and charge fees against, an assisted care facility of eight (8) or fewer unrelated persons as a single-family residence, despite the definitions used in the district's ordinances. *Hayden Lake Rec. Water & Sewer Dist. v. Haydenvue Cottage, LLC*, 835 F. Supp. 2d 965 (D. Idaho 2011).

§ 67-6532. Licensure, standards and restrictions. — (1) The department of health and welfare may require group residences, as defined in section 67-6531, Idaho Code, to be licensed and set minimum standards for providing services or operation. Such licensure may be under the residential or assisted living facility rules, or under the intermediate care facilities for people with intellectual disabilities or related conditions rules, or under rules specifically written for such group residences.

(2) No conditional use permit, zoning variance, or other zoning clearance shall be required of a group residence, as defined in [section 67-6531, Idaho Code](#), which is not required of a single family dwelling in the same zone.

(3) No local ordinances or local restrictions shall be applied to or required for a group residence, as defined in [section 67-6531, Idaho Code](#), which is not applied to or required for a single family dwelling in the same zone.

(4) The limitations provided for in subsections (2) and (3) of this section shall not apply to tenancy or planned tenancy in a group residence, as defined in [section 67-6531, Idaho Code](#), by persons who are under the supervision of the state board of correction pursuant to [section 20-219, Idaho Code](#), or who are required to register pursuant to chapter 83 or 84, title 18, Idaho Code, or whose tenancy would otherwise constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.

History.

[I.C., § 67-6532](#), as added by 1979, ch. 319, § 1, p. 858; am. 1989, ch. 193, § 17, p. 475; am. 1993, ch. 18, § 3, p. 70; am. 2000, ch. 274, § 154, p. 799; am. 2008, ch. 123, § 2, p. 342; am. 2010, ch. 235, § 63, p. 542.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

State board of corrections, § 20-201A.

Amendments.

The 2008 amendment, by ch. 123, in subsection (a), substituted “group residences” for “such residences” and inserted “as defined in [section 67-6531, Idaho Code](#),” in the first sentence and, in the last sentence, inserted “group”; in subsections (b) and (c), substituted “group residence, as defined in [section 67-6531, Idaho Code](#)” for “residential facility which serves eight (8) or fewer mentally and/or physically handicapped or elderly persons and is supervised as required in [section 67-6531, Idaho Code](#)”; and added subsection (d).

The 2010 amendment, by ch. 235, redesignated the subsections numerically; and in the last sentence in subsection (1), substituted “people with intellectual disabilities” for “mentally retarded.”

Compiler’s Notes.

Section 2 of S.L. 1979, ch. 319 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 3 of S.L. 1979, ch. 319 declared an emergency. Approved April 5, 1979.

Section 3 of S.L. 2008, ch. 123 declared an emergency. Approved March 17, 2008.

CASE NOTES

Applicability.

Because the provisions of §§ 67-6530 and 67-6531 and this section apply to zoning and zoning-like cases, a water and sewer district must treat, and charge fees against, an assisted care facility of eight (8) or fewer unrelated persons as a single-family residence, despite the definitions used in the district’s ordinances. [Hayden Lake Rec. Water & Sewer Dist. v. Haydenview Cottage, LLC](#), 835 F. Supp. 2d 965 (D. Idaho 2011).

§ 67-6533. Location of stores selling sexual material restricted in certain areas. — (a) From and after January 1, 1980, no person or entity shall own or operate any store, shop or business which sells or rents any materials defined as obscene materials in section 18-4101, Idaho Code, within twenty-five hundred (2500) feet of any school, church, or place of worship measured in a straight line to the nearest entrance to the premises.

(b) From and after January 1, 1980, no person or entity shall own or operate any store, shop or business which sells or rents any materials defined in subsection 1 of [section 18-1515, Idaho Code](#), where such materials constitute ten percent (10%) or more of the printed materials held for sale or rent of such store, shop or business, within twenty-five hundred (2500) feet of any school, church, or place of worship measured in a straight line to the nearest entrance to the premises.

(c) From and after the effective date of this act, a violation of subsection (a) or subsection (b) of this section shall be misdemeanor.

(d) A judge of a court of competent jurisdiction shall immediately issue a temporary restraining order for a violation of subsection (a) or subsection (b) of this section upon application therefore [therefor] by any public or private entity or person and upon compliance with the Idaho rules of civil procedure, except that no bond or security for the issuance of such restraining order shall be required. Further, a violation of subsection (a) or subsection (b) of this section shall subject the person and entities therefore [therefor] to a preliminary and permanent order of any court of this state enjoining them from such violation and no bond or security shall be required from the plaintiff or applicant therefore [therefor].

(e) No entity, public or private, nor any person shall be liable for any damages, costs or attorney fees for any acts attempting to civilly or criminally enforce this section.

(f) Nothing contained in this section shall preempt or prohibit cities or counties from regulating or restricting the location of the business activity described in this section and cities and counties are hereby specifically authorized to so regulate or restrict the location of said business activity.

History.

I.C., § 67-6533, as added by 1980, ch. 82, § 1, p. 181.

STATUTORY NOTES**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

Compiler's Notes.

The phrase “the effective date of this act” in subsection (c) refers to the effective date of S.L. 1980, Chapter 82, which was retroactively effective on January 1, 1980.

The bracketed word “therefor” in subsection (d) was inserted by the compiler to correct the enacting legislation.

Section 2 of S.L. 1980, ch. 82 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 3 of S.L. 1980, ch. 82, declared an emergency and provided that the act should take effect on and after its passage and approval, and retroactively to January 1, 1980. Approved March 18, 1980.

§ 67-6534. Adoption of hearing procedures. — The governing board shall, by ordinance or resolution, adopt procedures for the conduct of public hearings. At a minimum such hearing procedures shall provide an opportunity for all affected persons to present and rebut evidence.

History.

I.C., § 67-6534, as added by 1982, ch. 129, § 1, p. 371; am. 1999, ch. 396, § 16, p. 1099.

CASE NOTES

Initiative legislation prohibited.

Procedure.

Initiative Legislation Prohibited.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. *Gumprecht v. City of Coeur d'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

Procedure.

Although the neighbors claimed a number of due process violations, development approval process followed by the Valley County board of commissioners did not rise to the level of a due process violation justifying reversal; there were four public hearings on the developer's application, and the neighbors were heard and participated in each hearing. *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007).

Cited Whitted v. Canyon County Bd. of Comm'rs, 137 Idaho 118, 44 P.3d 1173 (2002); Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs), 153 Idaho 298, 281 P.3d 1076 (2012).

§ 67-6535. Approval or denial of any application to be based upon express standards and to be in writing. — (1) The approval or denial of any application required or authorized pursuant to this chapter shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county. Such approval standards and criteria shall be set forth in express terms in land use ordinances in order that permit applicants, interested residents and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval. Whenever the nature of any decision standard or criterion allows, the decision shall identify aspects of compliance or noncompliance with relevant approval standards and criteria in the written decision.

(2) The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(a) Failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization, or denial of same, on appeal.

(b) Any applicant or affected person seeking judicial review of compliance with the provisions of this section must first seek reconsideration of the final decision within fourteen (14) days. Such written request must identify specific deficiencies in the decision for which reconsideration is sought. Upon reconsideration, the decision may be affirmed, reversed or modified after compliance with applicable procedural standards. A written decision shall be provided to the applicant or affected person within sixty (60) days of receipt of the request for reconsideration or the request is deemed denied. A decision

shall not be deemed final for purposes of judicial review unless the process required in this subsection has been followed. The twenty-eight (28) day time frame for seeking judicial review is tolled until the date of the written decision regarding reconsideration or the expiration of the sixty (60) day reconsideration period, whichever occurs first.

(3) It is the intent of the legislature that decisions made pursuant to this chapter should be founded upon sound reason and practical application of recognized principles of law. In reviewing such decisions, the courts of the state are directed to consider the proceedings as a whole and to evaluate the adequacy of procedures and resultant decisions in light of practical considerations with an emphasis on fundamental fairness and the essentials of reasoned decision making. Only those whose challenge to a decision demonstrates actual harm or violation of fundamental rights, not the mere possibility thereof, shall be entitled to a remedy or reversal of a decision. Every final decision rendered concerning a site-specific land use request shall provide or be accompanied by notice to the applicant regarding the applicant's right to request a regulatory taking analysis pursuant to [section 67-8003, Idaho Code](#). An applicant denied an application or aggrieved by a final decision concerning matters identified in [section 67-6521\(1\)\(a\), Idaho Code](#), may, within twenty-eight (28) days after all remedies have been exhausted under local ordinance, seek judicial review under the procedures provided by chapter 52, title 67, Idaho Code. An appeal shall be from the final decision and not limited to issues raised in the request for reconsideration.

History.

[I.C., § 67-6535](#), as added by 1982, ch. 129, § 2, p. 371; am. 1999, ch. 396, § 17, p. 1099; am. 2003, ch. 142, § 8, p. 410; am. 2010, ch. 175, § 4, p. 359; am. 2013, ch. 216, § 3, p. 507.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 175, redesignated the subsections numerically; in subsections (1) and (2), substituted “any application required or authorized pursuant to this chapter” for “any application provided for in this chapter”; and added the last sentence in subsection (3).

The 2013 amendment, by ch. 216, inserted “express” in the section heading; added the last two sentences in subsection (1); added paragraphs (2)(a) and (2)(b); and, in subsection (3), added the last sentence.

Effective Dates.

Section 5 of S.L. 2010, ch. 175 declared an emergency. Approved March 31, 2010.

CASE NOTES

[Applicability.](#)

[Conclusory statements.](#)

[Initiative legislation prohibited.](#)

[Judicial review.](#)

[Procedure.](#)

[Unauthorized visit.](#)

[Applicability.](#)

This section did not apply in the case of property owners who claimed that the denial of their rezoning application was not supported by substantial evidence because the board of commissioners did not vote to approve or to deny the owners’ application. Section 67-6506 had required a commissioner who was related to one of the owners to abstain from participating in the proceedings, but there was no provision in the law for the appointment of a substitute, and because the two remaining commissioners had been split on the issue, there was no majority vote. [Brower v. Bingham County Commissioners \(In re Zoning Change\), 140 Idaho 512, 96 P.3d 613 \(2004\).](#)

[Conclusory Statements.](#)

Because the findings and conclusions of a county board of commissioners consisted of conclusory statements unsupported by any reasoned explanation, the findings did not meet the requirements of subsection (2) and lacked the information needed for meaningful judicial review of the board’s approval of a preliminary plat application, which

prejudiced the adjacent owners' substantial right to due process. [Jasso v. Camas County](#), 151 Idaho 790, 264 P.3d 897 (2011).

Initiative Legislation Prohibited.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. [Gumprecht v. City of Coeur d'Alene](#), 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, [City of Boise City v. Keep the Commandments Coalition \(In re Initiative Petition for a Ten Commandments Display\)](#), 143 Idaho 254, 141 P.3d 1123 (2006).

Judicial Review.

District court's summary judgment, voiding approval of a conditional use permit to develop a gravel mine and asphalt plant that was granted by the planning and development council, was reversed, as the board of county commissioners was the designated decision-making body for appeals of decisions of the planning and development council, and the district court should have applied the doctrine of exhaustion to dismiss the landowner's complaint. [White v. Bannock County Comm'rs](#), 139 Idaho 396, 80 P.3d 332 (2003).

This chapter does not mention any permit related to the annexation of land by a city, and the developer did not argue that the city denied it any permit required or authorized under this chapter; therefore, this chapter did not authorize judicial review. [Black Labrador Investing, LLC v. Kuna City Council](#), 147 Idaho 92, 205 P.3d 1228 (2009).

Procedure.

Zoning board's actions did not constitute unlawful procedure by failing to require strict compliance with the rules of evidence. The board held two hearings and took comments from the parties; while the board did not strictly comply with the rules of evidence, the evidence was presented in a

format in which the credibility of the witnesses and the evidence could be assessed firsthand. *Evans v. Bd. of Comm'rs*, 137 Idaho 428, 50 P.3d 443 (2002).

Findings of fact and conclusions adopted by a board of commissioners satisfied the requirements of this section, as they addressed the applicable provisions of the comprehensive plan and zoning ordinance and how the zone change and planned unit development complied with them; the county's subdivision ordinance did not require written findings by the board where, as here, the public documents or records of the public meetings were already contained in the record. *Evans v. Teton County*, 139 Idaho 71, 73 P.3d 84 (2003).

County board of commissioners complied with the requirements of this section because it included the criteria and standards it considered relevant in its decision to issue a permit for the building of a subdivision, and it provided detailed facts, and explained its rationale for its decisions. Therefore, the board's written findings and conclusions did not violate a challenging landowner's due process rights. *Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 148 P.3d 1247 (2006).

Although the neighbors claimed a number of due process violations, development approval process followed by the Valley County board of commissioners did not rise to the level of a due process violation justifying reversal; there were four public hearings on the developer's application, and the neighbors were heard and participated in each hearing. *Neighbors for a Healthy Gold Fork v. Valley County*, 145 Idaho 121, 176 P.3d 126 (2007).

Board of county commissioners acted within its authority under §§ 67-6509 and 67-6511 and Idaho Const., Art. XII, § 2 and subsection (3) of this section, when it considered two zoning changes pursuant to a single application; and there was no violation of procedural due process because the objectors had sufficient opportunity to express their views. *Ciszek v. Kootenai County Bd. of Comm'rs*, 151 Idaho 123, 254 P.3d 24 (2011).

Unauthorized Visit.

Where a planning commissioner visited the site of a proposed subdivision without notifying the applicant beforehand of his visit, no actual harm to the applicant was shown, even though the application was

denied by the board of county commissioners, where no evidence was presented that the commissioner's visit affected the planning and zoning commission's unanimous recommendation, tainted the full commission's subsequent site visit, or prejudiced the board of county commissioners' subsequent unanimous decision to deny the application. *Terrazas v. Blaine County*, 147 Idaho 193, 207 P.3d 169 (2009).

Cited *Bone v. City of Lewiston*, 107 Idaho 844, 693 P.2d 1046 (1984); *Castaneda v. Brighton Corp.*, 130 Idaho 923, 950 P.2d 1262 (1998); *Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 993 P.2d 596 (1999); *Blaha v. Board of Ada County Comm'rs*, 134 Idaho 770, 9 P.3d 1236 (2000); *Evans v. Bd. of Comm'rs*, 137 Idaho 428, 50 P.3d 443 (2002); *Whitted v. Canyon County Bd. of Comm'rs*, 137 Idaho 118, 44 P.3d 1173 (2002); *Friends of Minidoka v. Jerome County (In re Jerome County Bd. of Comm'rs)*, 153 Idaho 298, 281 P.3d 1076 (2012).

§ 67-6536. Transcribable record. — In every case in this chapter where an appeal is provided for, a transcribable verbatim record of the proceeding shall be made and kept for a period of not less than six (6) months after a final decision on the matter. The proceeding envisioned by this statute for which a transcribable verbatim record must be maintained shall include all public hearings at which testimony or evidence is received or at which an applicant or affected person addresses the commission or governing board regarding a pending application or during which the commission or governing board deliberates toward a decision after compilation of the record. Upon written request and within the time period provided for retention of the record, any person may have the record transcribed at his expense.

The governing board and commission shall also provide for the keeping of minutes of the proceedings. Minutes shall be retained indefinitely or as otherwise provided by law.

History.

I.C., § 67-6536, as added by 1982, ch. 129, § 3, p. 371; am. 1999, ch. 396, § 18, p. 1099.

CASE NOTES

Defects in record.

Initiative legislation prohibited.

Judicial review.

Defects in Record.

Although portions of the transcripts are replete with inaudible omissions, these defects were cured by the written testimony contained in the record and the detailed minutes of the public hearings. *Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 993 P.2d 596 (1999).

Initiative Legislation Prohibited.

The legislature clearly intended that the authority to enact comprehensive plans, establish zoning districts and adopt amendatory ordinances be exercised exclusively by city and county legislative or governing bodies and pursuant to specific prescribed procedures; thus, the comprehensiveness of zoning legislation in Idaho leaves no room for direct legislation by electors through an initiative election, and an initiative through which city sought to enact ordinance establishing height criteria for certain areas was in conflict with this chapter and was invalid. *Gumprecht v. City of Coeur d'Alene*, 104 Idaho 615, 661 P.2d 1214 (1983), overruled on other grounds, *City of Boise City v. Keep the Commandments Coalition (In re Initiative Petition for a Ten Commandments Display)*, 143 Idaho 254, 141 P.3d 1123 (2006).

Judicial Review.

A transcribable record is indispensable to meaningful judicial review of rezoning proceedings where the sufficiency of notice, adequacy of opportunity to present or to rebut evidence, or the existence of evidence supporting the agency's findings may be put at issue. *Gay v. County Comm'rs*, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982).

Application of the "verbatim" requirement under this section so that transcripts reflect the content of the agency proceedings word-for-word is difficult, given the somewhat informal, quasi-judicial nature of these proceedings. *Rural Kootenai Org., Inc. v. Board of Comm'rs*, 133 Idaho 833, 993 P.2d 596 (1999).

§ 67-6537. Use of surface and ground water. — (1) The intent of this section is to encourage the use of surface water for irrigation. All applicants proposing to make land use changes shall be required to use surface water, where reasonably available, as the primary water source for irrigation. Surface water shall be deemed reasonably available if:

(a) A surface water right is, or reasonably can be made, appurtenant to the land;

(b) The land is entitled to distribution of surface water from an irrigation district, canal company, ditch users association, or other irrigation delivery entity, and the entity's distribution system is capable of delivering the water to the land; or

(c) An irrigation district, canal company, or other irrigation delivery entity has sufficient available surface water rights to apportion or allocate to the land and has a distribution system capable of delivering the water to the land.

(2) Consistent with sections 42-108 and 42-222, Idaho Code, any change in the nature of use of surface water provided by an irrigation delivery entity must be authorized by the entity holding the water right(s) for the available surface water. Nothing in this section shall alter the authority and discretion of irrigation delivery entities to apportion, allocate and distribute surface water, or for municipalities, counties, or water and sewer districts to pass ordinances or regulations to promote the use of surface water for irrigation.

(3) Nothing in this section shall be construed to override or amend any provision of title 42 or 43, Idaho Code, or impair any rights acquired thereunder.

(4) When considering amending, repealing or adopting a comprehensive plan, the local governing board shall consider the effect the proposed amendment, repeal or adoption of the comprehensive plan would have on the source, quantity and quality of ground water in the area.

History.

I.C., § 67-6537, as added by 1989, ch. 421, § 3, p. 1027; am. 2005, ch. 338, § 1, p. 1056.

STATUTORY NOTES

Compiler's Notes.

Section 4 of S.L. 1989, ch. 421 read: This act may be known and cited as the "Ground Water Quality Protection Act of 1989."

The "s" enclosed in parentheses so appeared in the law as enacted.

CASE NOTES

Local Regulation.

Where a dairymen's association and a cattle association filed a complaint challenging the constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations (CAFOs), the supreme court held that Ordinance 90 did not violate Idaho Const., Art. XII, § 2. While § 42-101 provided that control over the appropriation of water was vested in the state, local governing boards have the authority under this section to consider the effect any proposed amendments to the comprehensive plan would have on the water quantity in the area. *Idaho Dairymen's Ass'n v. Gooding County*, 148 Idaho 653, 227 P.3d 907 (2010).

RESEARCH REFERENCES

Idaho Law Review. — A Primer on Groundwater Law, Joseph W. Dellapenna. 49 Idaho L. Rev. 265 (2013).

§ 67-6538. Use for designed purpose protected — When vacancy occurs. — (1) No rights or authority granted pursuant to this chapter shall be construed to empower a city or county to enact any ordinance or resolution which deprives an owner of the right to use improvements on private property for their designed purpose based solely on the nonuse of the improvements for their designed purpose for a period of ten (10) years or less. Where an owner or his authorized agent permits or allows an approved or unlawful intervening use of the owner's property, the provisions of this section are not applicable.

(2) If the nonuse continues for a period of one (1) year or longer, the city or county may, by written request, require that the owner declare his intention with respect to the continued nonuse of the improvements in writing within twenty-eight (28) days of receipt of the request. If the owner elects to continue the nonuse, he shall notify the city or county in writing of his intention and shall post the property with notice of his intent to continue the nonuse of the improvements. He shall also publish notice of his intent to continue the nonuse in a newspaper of general circulation in the county where the property is located. If the property owner complies with the requirements of this subsection, his right to use such improvements in the future for their designed purpose shall continue, notwithstanding any change in the zoning of the property.

(3) The property owner may voluntarily elect to withdraw the use by filing with the clerk of the city or the county, as the case may be, an affidavit of withdrawn use. If the property is redesigned for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.

(4) For purposes of this section "designed purpose" means the use for which the improvements were originally intended, designed and approved pursuant to any applicable planning and zoning ordinances.

(5) The provisions of this section shall not be construed to prohibit a city or a county from passing or enforcing any other law or ordinance for the protection of the public health, safety and welfare.

History.

I.C., § 67-6538, as added by 1999, ch. 292, § 1, p. 731.

OPINIONS OF ATTORNEY GENERAL**State Regulations.**

Because the oil and gas conservation act (OGCA) does not express, either explicitly or impliedly, an intent to preempt the operation of local land use planning authorities, such authorities may be applied to oil and gas developments if done in a manner consistent with the goals, objectives, and authorities of the local land use planning act and in the absence of operational conflicts between the zoning ordinance and the OGCA or oil and gas conservation commission rules or orders. OAG 11-1.

§ 67-6539. Limitations on regulation of short-term rentals and vacation rentals. — (1) Neither a county nor a city may enact or enforce any ordinance that has the express or practical effect of prohibiting short-term rentals or vacation rentals in the county or city. A county or city may implement such reasonable regulations as it deems necessary to safeguard the public health, safety and general welfare in order to protect the integrity of residential neighborhoods in which short-term rentals or vacation rentals operate. A short-term rental or vacation rental shall be classified as a residential land use for zoning purposes subject to all zoning requirements applicable thereto.

(2) Neither a county nor a city can regulate the operation of a short-term rental marketplace.

History.

I.C., § 67-6539, as added by 2017, ch. 239, § 2, p. 591; am. 2018, ch. 79, § 1, p. 179.

STATUTORY NOTES

Amendments.

The 2018 amendment, by ch. 79, in subsection (1), substituted “in the county” for “throughout the jurisdiction of such” in the first sentence and substituted “A county” for “Notwithstanding the foregoing prohibition, a county” in the second sentence.

Effective Dates.

Section 3 of S.L. 2017, ch. 239 provided that the act should take effect on and after January 1, 2018.

Chapter 66

ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES — LOBBYISTS

Sec.

67-6601. Purpose of chapter.

67-6602. Definitions.

67-6603. Appointment of political treasurer.

67-6604. Accounts of political treasurer.

67-6605. Contributions obtained by a political committee.

67-6606. Expenditures by nonbusiness entity.

67-6607. Reports of contributions and expenditures by candidates and political committees.

67-6608. Special provision for certain elections and measures.

67-6609. Statement as to no contribution or expenditure.

67-6610. Contribution in excess of fifty dollars.

67-6610A. Limitations on contributions.

67-6610B. Retiring debt.

67-6610C. Use of contributed amounts for certain purposes.

67-6611. Independent expenditures.

67-6612. Disclosure of payments made to signature gatherers.

67-6613. Commercial reporting.

67-6614. Identification of source of contributions and expenditures.

67-6614A. Publication or distribution of political statements.

67-6615. Inspection by secretary of state and county clerks.

67-6616. Examination of statements.

67-6617. Registration of lobbyists.

67-6618. Exemption from registration.

67-6619. Reporting by lobbyists.

67-6619A. Reports by state entities.

67-6620. Employment of unregistered persons.

67-6621. Duties of lobbyists.

67-6622. Docket — Contents — Reports to legislature — Subjects of legislation — Written authorization.

67-6623. Duties of secretary of state and county clerks.

67-6624. Statements to be certified.

67-6625. Violations — Civil fine — Misdemeanor penalty — Prosecution — Limitation — Venue.

67-6625A. Late filing of statement or report — Fees.

67-6626. Injunctions.

67-6627. Persuasive poll concerning candidate must identify person or entity paying for poll.

67-6628. Electioneering communications — Statements.

67-6629. Severability.

67-6630. Construction.

§ 67-6601. Purpose of chapter. — The purpose of this chapter is:

(1) To promote public confidence in government; and

(2) To promote openness in government and to promote transparency by those giving financial support to election campaigns and those promoting or opposing legislation or attempting to influence executive or administrative actions for compensation.

History.

Init. Measure 1974, No. 1, § 1; am. 2006, ch. 106, § 1, p. 294; am. 2019, ch. 288, § 1, p. 830.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 106, inserted “or attempting to influence executive or administrative actions” in subsection (b).

The 2019 amendment, by ch. 288, substituted “chapter” for “act” in the section heading and the introductory paragraph; redesignated the subsections; and rewrote present subsection (2), which formerly read: “To promote openness in government and avoiding secrecy by those giving financial support to state election campaigns and those promoting or opposing legislation or attempting to influence executive or administrative actions for compensation at the state level.”

Effective Dates.

Initiative Measure 1974, No. 1 was voted upon November 5, 1974, and was proclaimed by the governor to be in full force and effect November 27, 1974.

Section 26 of S.L. 2019, ch. 288 provided that the amendment of this section should take effect on and after January 1, 2020.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts. 35 A.L.R.6th 1.

§ 67-6602. Definitions. — As used in this chapter, the following terms have the following meanings:

(1) “Candidate” means an individual who seeks nomination, election, or reelection to public office and who has taken any of the following actions:

- (a) Announced the individual’s candidacy publicly;
- (b) Filed for public office;
- (c) Received a contribution for the purpose of promoting the individual’s candidacy for office; or
- (d) Made an expenditure, contracted for services, or reserved space with the intent of promoting the individual’s candidacy for office.

For purposes of this chapter, an incumbent shall be presumed to be a candidate in the subsequent election for his or her office until the incumbent has failed to file a declaration of candidacy by the statutory deadline.

(2) “Compensation” includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to do any of the foregoing, for services rendered or to be rendered, but does not include reimbursement of expenses if such reimbursement does not exceed the amount actually expended for such expenses and is substantiated by an itemization of such expenses.

(3) “Contractor” means a person who receives compensation from another person for either full-time or part-time work based on a contract or compensation agreement, but who is not an employee of that person.

(4) “Contribution” includes any advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, subscription or transfer of money or anything of value, and any contract, agreement, promise or other obligation, whether or not legally enforceable, to make a contribution, in support of or in opposition to any candidate, political committee or measure. Such term also includes personal funds or other property of a candidate or members of his household expended or

transferred to cover expenditures incurred in support of such candidate but does not include personal funds used to pay the candidate filing fee. Such term also includes the rendering of personal and professional services for less than full consideration, but does not include ordinary home hospitality or the rendering of “part-time” personal services of the sort commonly performed by volunteer campaign workers or advisors or incidental expenses not in excess of twenty-five dollars (\$25.00) personally paid for by any volunteer campaign worker. “Part-time” services, for the purposes of this definition, means services in addition to regular full-time employment, or, in the case of an unemployed person or persons engaged in part-time employment, services rendered without compensation or reimbursement of expenses from any source other than the candidate or political committee for whom such services are rendered. For the purposes of this act, contributions, other than money or its equivalent shall be deemed to have a money value equivalent to the fair market value of the contribution.

(5) “Election” means any state or local general, special, recall, or primary election.

(6) “Election campaign” means any campaign in support of or in opposition to a candidate for election to public office and any campaign in support of, or in opposition to, a measure.

(7)(a) “Electioneering communication” means any communication broadcast by television or radio, printed in a newspaper or on a billboard, directly mailed or delivered by hand to personal residences, or telephone calls made to personal residences, or otherwise distributed that:

(i) Unambiguously refers to any candidate; and

(ii) Is broadcasted, printed, mailed, delivered, made or distributed within thirty (30) days before a primary election or sixty (60) days before a general election; and

(iii) Is broadcasted to, printed in a newspaper, distributed to, mailed to or delivered by hand to, telephone calls made to, or otherwise distributed to an audience that includes members of the electorate for such public office.

(b) “Electioneering communication” does not include:

(i) Any news articles, editorial endorsements, opinion or commentary, writings, or letter to the editor printed in a newspaper, magazine, or other periodical not owned or controlled by a candidate, political committee, or political party;

(ii) Any editorial endorsements or opinions aired by a broadcast facility not owned or controlled by a candidate, political committee, or political party;

(iii) Any communication by persons made in the regular course and scope of their business or any communication made by a membership organization solely to members of such organization and their families;

(iv) Any communication that refers to any candidate only as part of the popular name of a bill or statute;

(v) A communication that constitutes an expenditure or an independent expenditure under this chapter.

(8) “Employee” means an individual who performs a service for wages or other compensation from which the individual’s employer withholds federal employment taxes under a contract for hire, written or oral.

(9) “Executive official” means:

(a) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general, superintendent of public instruction and any deputy or staff member of any of those individuals who, within the course and scope of his or her employment, is directly involved in major policy-influencing decisions for the office;

(b) A state department or agency director, deputy director, division administrator or bureau chief as established and enumerated in sections 67-2402 and 67-2406, Idaho Code;

(c) The membership and the executive or chief administrative officer of any board or commission that is authorized to make rules or conduct rulemaking activities pursuant to [section 67-5201, Idaho Code](#);

(d) The membership and the executive or chief administrative officer of any board or commission that governs any of the state departments enumerated in [section 67-2402, Idaho Code](#), not including public school districts;

(e) The membership and the executive or chief administrative officer of the Idaho public utilities commission, the Idaho industrial commission, and the Idaho state tax commission; and

(f) The members of the governing board of the state insurance fund and the members of the governing board and the executive or chief administrative officer of the Idaho housing and finance association, the Idaho energy resources authority, and the Idaho state building authority.

(10) “Expenditure” includes any payment, contribution, subscription, distribution, loan, advance, deposit, or gift of money or anything of value, and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. The term “expenditure” also includes a promise to pay, a payment or a transfer of anything of value in exchange for goods, services, property, facilities or anything of value for the purpose of assisting, benefiting or honoring any public official or candidate, or assisting in furthering or opposing any election campaign.

(11) “Independent expenditure” means any expenditure by a person for a communication expressly advocating the election, passage or defeat of a clearly identified candidate or measure that is not made with the cooperation or with the prior consent of, or in consultation with, or at the consent of, or in consultation with, or at the request of a suggestion of, a candidate or any agent or authorized committee of the candidate or political committee supporting or opposing a measure. As used in this subsection, “expressly advocating” means any communication containing a message advocating election, passage or defeat including, but not limited to, the name of the candidate or measure, or expression such as “vote for,” “elect,” “support,” “cast your ballot for,” “vote against,” “defeat” or “reject.”

(12) “Lobby” and “lobbying” each means attempting through contacts with, or causing others to make contact with, members of the legislature or legislative committees or an executive official to influence the approval, modification or rejection of any legislation by the legislature of the state of Idaho or any committee thereof or by the governor or to develop or maintain relationships with, promote goodwill with, or entertain members of the legislature or executive officials. “Lobby” and “lobbying” shall also mean communicating with an executive official for the purpose of influencing the consideration, amendment, adoption or rejection of any rule

or rulemaking as defined in [section 67-5201, Idaho Code](#), or any ratemaking decision, procurement, contract, bid or bid process, financial services agreement, or bond issue. Neither “lobby” nor “lobbying” includes an association’s or other organization’s act of communicating with the members of that association or organization; and provided that neither “lobby” nor “lobbying” includes communicating with an executive official for the purpose of carrying out ongoing negotiations following the award of a bid or a contract, communications involving ongoing legal work and negotiations conducted by and with attorneys for executive agencies, interactions between parties in litigation or other contested matters, or communications among and between members of the legislature and executive officials and their employees, or by state employees while acting in their official capacity or within the course and scope of their employment.

(13) “Lobbyist” includes any person who lobbies.

(14) “Lobbyist’s client” means the person on whose behalf the lobbyist is acting, directly or indirectly, as a contractor, and by whom the lobbyist or lobbyist’s employer is compensated for acting as a lobbyist.

(15) “Lobbyist’s employer” means the person or persons for whom a lobbyist is an employee, and by whom the lobbyist is compensated for acting as a lobbyist.

(16) “Local government office” means any publicly elected office for any political subdivision of the state or special district that is not a legislative, judicial, statewide, or federal office.

(17) “Measure” means any proposal submitted to the people for their approval or rejection at an election, including any initiative, referendum, recall election, or revision of or amendment to the state constitution. An initiative or referendum proposal shall be deemed a measure when the attorney general, county prosecutor, or city attorney, as appropriate, reviews it and gives it a ballot title. A recall shall be deemed a measure upon approval of the recall petition as to form pursuant to [section 34-1704, Idaho Code](#).

(18) “Nonbusiness entity” means any group of two (2) or more individuals, a corporation, association, firm, partnership, committee, club or

other organization that:

(a) Does not have as its principal purpose the conduct of business activities for profit; and

(b) Received during the preceding or current calendar year contributions, gifts or membership fees, which in the aggregate exceeded ten percent (10%) of its total receipts for such year.

(19) “Person” means an individual, corporation, association, firm, partnership, committee, political party, club or other organization or group of persons.

(20) “Political committee” means:

(a) Any person specifically designated to support or oppose any candidate or measure; or

(b) Any person who receives contributions and makes expenditures in an amount exceeding one thousand dollars (\$1,000) in any calendar year for the purpose of supporting or opposing one (1) or more candidates or measures. Any entity registered with the federal election commission shall not be considered a political committee for purposes of this chapter.

(c) A county, district or regional committee of a recognized political party shall not be considered a political committee for the purposes of this chapter unless such party committee has expenditures exceeding five thousand dollars (\$5,000) in a calendar year.

(21) “Political treasurer” means an individual appointed by a candidate or political committee as provided in [section 67-6603, Idaho Code](#).

(22) “Public office” means any local, legislative, judicial, or state office or position that is filled by election but does not include the office of precinct committeeman.

History.

Init. Measure 1974, No. 1, § 2; am. 1977, ch. 180, § 1, p. 502; am. 1978, ch. 58, § 1, p. 112; am. 1986, ch. 218, § 1, p. 554; am. 1992, ch. 196, § 1, p. 605; am. 1993, ch. 189, § 1, p. 481; am. 1994, ch. 5, § 1, p. 6; am. 1994, ch. 379, § 1, p. 1218; am. 1997, ch. 393, § 1, p. 1249; am. 1999, ch. 176, § 1, p. 476; am. 2001, ch. 291, § 2, p. 1028; am. 2004, ch. 277, § 3, p. 767; am.

2005, ch. 254, § 1, p. 777; am. 2006, ch. 106, § 2, p. 294; am. 2008, ch. 306, § 1, p. 847; am. 2012, ch. 162, § 3, p. 437; am. 2015, ch. 284, § 1, p. 1151; am. 2019, ch. 288, § 2, p. 830; am. 2019, ch. 290, § 1, p. 849; am. 2020, ch. 82, § 37, p. 174.

STATUTORY NOTES

Cross References.

Idaho energy resources authority, § 67-8901 et seq.

Idaho housing and finance association, § 67-6201 et seq.

Idaho state building authority, § 67-6401 et seq.

Industrial commission, § 72-501 et seq.

Public utilities commission, § 61-201 et seq.

State insurance fund, § 72-901 et seq.

State tax commission, § 63-101.

Amendments.

The 2008 amendment, by ch. 306, in paragraph (g)(1), added the language beginning “and any deputy or staff member of one (1) of those individuals”; and in the first sentence in subsection (j), added “or to develop or maintain relationships with, promote goodwill with, or entertain members of the legislature or executive officials.”

The 2006 amendment, by ch. 106, added present subsection (g); redesignated former subsections (g) to (q) as (h) to (r); and rewrote present subsection (j), which formerly read: “Lobby’ and ‘lobbying’ each means attempting through contacts with, or causing others to make contact with, members of the legislature or legislative committees, to influence the approval, modification or rejection of any legislation by the legislature of the state of Idaho or any committee thereof. Neither ‘lobby’ nor ‘lobbying’ includes an association’s or other organization’s act of communicating with the members of that association or organization.”

The 2012 amendment, by ch. 162, in subsection (m), inserted “recall election for statewide or legislative district offices” in the first sentence and added the last sentence.

The 2015 amendment, by ch. 284, inserted “or current” in paragraph (2) (n).

This section was amended by two 2019 acts which appear to be compatible and have been compiled together.

The 2019 amendment, by ch. 288, redesignated the existing paragraphs; rewrote present subsection (1); inserted “state or local” and inserted “recall” in present subsection (5); in present subsection (7), inserted “political committee” in paragraphs (b)(i) and (b)(ii); substituted “any of those” for “one (1) of those” near the middle of present paragraph (9)(a); inserted present subsection [(16)]; in present subsection [(17)], in the first sentence, deleted “to be voted statewide” following “proposal” near the beginning, and deleted “for statewide or legislative district offices” preceding “or revision” near the end, and inserted “county prosecutor, or city attorney, as appropriate” near the middle of the second sentence; substituted “one thousand dollars (\$1000)” for “five hundred dollars (\$500)” in present paragraph [(20)](b); and rewrote present subsection [(22)], which formerly read: “Public office’ means any state office or position, state senator, state representative, and judge of the district court that is filled by election”.

The 2019 amendment, by ch. 290, redesignated the existing paragraphs; inserted present subsections (3), (8), and (14), and redesignated the existing subsections accordingly; and rewrote present subsection (15), which formerly read: “‘Lobbyist’s employer’ means the person or persons by whom a lobbyist is employed, directly or indirectly, and all persons by whom he is compensated for acting as a lobbyist.”

The 2020 amendment, by ch. 82, corrected the subsection designation problem caused by the multiple 2019 amendments of this section.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 2 of S.L 1978, ch. 58 declared an emergency. Approved March 8, 1978.

Section 2 of S.L. 1994, ch. 5, declared an emergency and provided this act shall be in full force and effect on and after February 9, 1994, and

retroactively to January 1, 1994. Approved February 9, 1994.

Section 8 of S.L. 1997, ch. 393 provided that the act should take effect on and after July 1, 1997. It also provides that “If an individual or other recognized legal entity has exceeded the legal contribution limits prescribed in Section 3 of this act prior to the effective date of this act, no penalty shall apply as long as the individual or other recognized legal entity makes no further contributions to the candidate or political committee for the primary election or for the general election. Candidates shall be allowed to carry fund balances from one election to another and not have them count as a contribution as provided in Section 3 of this act.”

Section 4 of S.L. 2004, ch. 277 declared an emergency. Approved March 23, 2004.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

CASE NOTES

Cited *Ameritel Inns, Inc. v. Greater Boise Auditorium Dist.*, 141 Idaho 849, 119 P.3d 624 (2005).

RESEARCH REFERENCES

Idaho Law Review. — Behind the Times: A Comparative Argument that the State of Idaho Should Combat the Revolving Door Effect with Waiting Period Legislation, Comment. 52 Idaho L. Rev. 639 (2016).

§ 67-6603. Appointment of political treasurer. — (a) Each candidate and political committee shall appoint a political treasurer and certify the full name and complete address of the political treasurer to the secretary of state. A political treasurer so appointed shall be a registered elector of this state. An individual may be appointed and serve as political treasurer for a candidate and a political committee or two (2) or more candidates or political committees. A candidate may appoint himself his own political treasurer.

(b) A candidate or political committee may remove his or its political treasurer. In case of the death, resignation or removal of his or its political treasurer before compliance with all obligations of a political treasurer under this act, such candidate or political committee shall appoint a successor and certify the name and address of the successor in the manner provided in the case of an original appointment.

(c) No contribution shall be received or expenditure made by or on behalf of a candidate or political committee: (1) Until the candidate or political committee appoints a political treasurer and certifies the name and address of the political treasurer to the secretary of state or, in the event of a vacancy in the office of political treasurer, has certified the name and address of the successor as provided therein; and (2) Unless the contribution is received or expenditure made by or through the political treasurer for the candidate or political committee.

History.

Init. Measure 1974, No. 1, § 3; am. 2015, ch. 244, § 59, p. 1008.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2015 amendment, by ch. 244, substituted “therein” for “therin” near the end of paragraph (c)(1).

Compiler's Notes.

The term “this act” in subsection (b) refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

§ 67-6604. Accounts of political treasurer. — (1) The political treasurer for each candidate or political committee shall keep detailed accounts, current within not more than seven (7) days after the date of receiving the contribution or making an expenditure, of all contributions received and all expenditures made by or on behalf of the candidate or political committee that are required to be set forth in a statement filed under this chapter.

(2) Accounts kept by the political treasurer for a candidate or political committee may be inspected before the election to which the accounts refer by the secretary of state, or county clerk for local government offices or measures, or his agent or employee, who is making an investigation pursuant to [section 67-6615, Idaho Code](#).

(3) Accounts kept by a political treasurer shall be preserved by him for at least one (1) year after the date of the election to which the accounts refer or at least one (1) year after the date the last statement is filed under [section 67-6607, Idaho Code](#), whichever is later.

History.

Init. Measure 1974, No. 1, § 4; am. 2019, ch. 288, § 3, p. 830.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2019 amendment, by ch. 288, redesignated the subsections; substituted “chapter” for “act” at the end of subsection (1); rewrote subsection (2), which formerly read: “Accounts kept by the political treasurer for a candidate or political committee may be inspected, before the election to which the accounts refer, by the Secretary of State, or his agent or employee, who is making an investigation pursuant to section 67-6615”; and, in present subsection (3), deleted “supplemental” preceding “statement” and substituted “[section 67-6607, Idaho Code](#)” for “[section 67-6609, Idaho Code](#)”.

Effective Dates.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

§ 67-6605. Contributions obtained by a political committee. — Contributions shall not be obtained for a political committee by use of coercion or physical force, by making a contribution a condition of employment or membership, or by using or threatening to use job discrimination or financial reprisals. A political committee may solicit or obtain contributions from individuals as provided in chapter 26, title 44, Idaho Code, or as provided in section 44-2004, Idaho Code. A violation of the provisions of this section shall be punished as provided in subsection (b) [(2)] of section 67-6625, Idaho Code.

History.

I.C., § 67-6605, as added by 1997, ch. 393, § 2, p. 1249; am. 2003, ch. 97, § 3, p. 311.

STATUTORY NOTES

Compiler's Notes.

The bracketed insertion in the last sentence was added by the compiler to reflect the 2017 amendment of § 67-6625.

Section 4 of S.L. 2003, ch. 97 provides: “The provisions of this act shall apply to all contracts entered into after the effective date of this act and shall apply to any renewal of any existing contract.” S.L. 2003, Chapter 97 was effective July 1, 2003.

§ 67-6606. Expenditures by nonbusiness entity. — (1) Any nonbusiness entity that is not a political committee as defined in section 67-6602, Idaho Code, making expenditures in or directed to voters in the state of Idaho in an amount exceeding one thousand dollars (\$1,000) in any calendar year for the purpose of supporting or opposing one (1) or more candidates or measures shall file a statement with the secretary of state. The statement shall include:

(a) The name and address of the nonbusiness entity and the name and address of its principal officer or directors.

(b) The name and address of each person whose fees, dues, payments or other consideration paid to such nonbusiness entity during either of the prior two (2) calendar years has exceeded five hundred dollars (\$500) or who has paid or has agreed to pay fees, dues, payments or other consideration exceeding five hundred dollars (\$500) to such entity during the current year.

(2) This statement shall be filed within thirty (30) days of when the one thousand dollar (\$1,000) threshold mentioned in subsection (1) of this section is exceeded.

History.

I.C., § 67-6606, as added by 1994, ch. 379, § 3, p. 1218; am. 2015, ch. 284, § 2, p. 1151; am. 2019, ch. 288, § 4, p. 830; am. 2019, ch. 290, § 2, p. 849.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Prior Laws.

Former § 67-6606, which comprised Init. Measure 1974, No. 1, § 6, was repealed by S.L. 1990, ch. 62, § 1, approved March 20, 1990, and effective retroactively to January 1, 1990.

Amendments.

The 2015 amendment, by ch. 284, in subsection (1), substituted “which is not a political committee as defined in [section 67-6602\(p\), Idaho Code](#), making expenditures in or directed to voters in the state of Idaho” for “domiciled in the state of Idaho” near the beginning of the introductory paragraph and substituted “had paid” for “is obligated to” near the middle of paragraph (b).

This section was amended by two 2019 acts which appear to be compatible and have been compiled together.

The 2019 amendment, by ch. 288, substituted “[section 67-6602, Idaho Code](#)” for “[section 67-6602\(p\), Idaho Code](#)” near the beginning of the first sentence in subsection (1).

The 2019 amendment, by ch. 290, substituted “[section 67-6602, Idaho Code](#)” for “[67-6602\(p\), Idaho Code](#)” near the beginning of the introductory paragraph in subsection (1).

Effective Dates.

Section 4 of S.L. 1994, ch. 379 declared an emergency. Approved April 7, 1994.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

§ 67-6607. Reports of contributions and expenditures by candidates and political committees. — (1) Each candidate or the political treasurer for each candidate, and each political committee or the political treasurer of each political committee, shall file with the secretary of state a statement of all contributions received and all expenditures and encumbrances made by or on behalf of the candidate or political committee, according to the schedule provided in this section. The statement shall itemize each contribution received and each expenditure or encumbrance made during the reporting period and shall include the following:

(a) Under contributions, the statement shall include a list of all the contributions received, including any funds or property of the candidate used to cover expenditures. The statement shall list the full name and complete address of each person who contributed an aggregate amount of more than fifty dollars (\$50.00) and the amount contributed by that person. The statement may list as a single item the total amount of contributions of fifty dollars (\$50.00) or less; and

(b) Under expenditures, the statement shall include the name and address of each person to whom an expenditure or encumbrance was made in the amount of twenty-five dollars (\$25.00) or more, and the amount, date, and purpose of each such expenditure. Each expenditure or encumbrance in the amount of twenty-five dollars (\$25.00) or more shall be evidenced by an invoice, receipt, or canceled check or an accurate copy thereof. Such evidence shall not be filed with the statement but shall be retained by the committee or candidate for a period of one (1) year after the statement has been filed. The statement may list as a single item the total amount of expenditures and encumbrances of less than twenty-five dollars (\$25.00) without showing the exact amount of or requiring evidence of each such expenditure or encumbrance. Anything of value, other than money, paid for or contributed by any person shall be listed both as an expenditure and as a contribution.

(2) For the first report under this section, the reporting period shall cover the period beginning with the first contribution, expenditure, or encumbrance through the end of the current reporting period. Each

candidate and each political committee, or the treasurer for a candidate or political committee or ballot measure, shall file the report described under subsection (1) of this section as follows:

(a) In the year of the election, a monthly report shall be filed for each month of the year. Each report shall be filed by the tenth day of the month following the month being reported; and

(b) For the nonelection year, an annual report covering the nonelection year shall be filed by January 10 of the following year.

(3) Notwithstanding any other reports required under this section, each candidate and each political committee, or the political treasurer for each candidate and each political committee, shall notify the secretary of state of any contribution of one thousand dollars (\$1,000) or more. This notification shall be made within forty-eight (48) hours after the receipt of such contribution and shall include the name of the candidate, political committee or measure, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions in the regular reports.

(4) All reports required pursuant to this section shall be filed online with the secretary of state, unless a waiver has been provided under [section 67-6623, Idaho Code](#), by no later than midnight on the date the filing is due.

(5) Reports required to be filed under the provisions of this section shall be filed until the account no longer shows any unexpended balance of contributions or expenditure deficit.

History.

Init. Measure 1974, No. 1, § 7; am. 1977, ch. 225, § 1, p. 670; am. 1986, ch. 218, § 2, p. 554; am. 1987, ch. 344, § 2, p. 731; am. 1990, ch. 62, § 2, p. 137; am. 1992, ch. 196, § 2, p. 605; am. 1993, ch. 203, § 1, p. 557; am. 1994, ch. 379, § 2, p. 1218; am. 2002, ch. 240, § 1, p. 715; am. 2010, ch. 22, § 1, p. 38; am. 2015, ch. 231, § 1, p. 726; am. 2019, ch. 288, § 5, p. 830; am. 2020, ch. 7, § 1, p. 9.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2010 amendment, by ch. 22, at the end of subsection (e), added “and may be filed by other electronic means as approved by the secretary of state”.

The 2015 amendment, by ch. 231, in subsection (c), deleted “supporting or opposing a measure” following “political committee” in the first sentence and inserted “political committee” near the middle of the second sentence.

The 2019 amendment, by ch. 288, rewrote the section to the extent that a detailed comparison is impracticable.

The 2020 amendment, by ch. 7, substituted “Each candidate or the political treasurer for each candidate, and each political committee or the political treasurer” for “The political treasurer for each candidate and the political treasurer” at the beginning of the introductory paragraph in subsection (1); added “Each candidate and each political committee, or” at the beginning of the second sentence in subsection (2); and substituted “each candidate and each political committee, or the political treasurer for each candidate and each political committee” for “the political treasurer for any candidate and any political committee” near the beginning of subsection (3).

Effective Dates.

Section 3 of S.L. 1986, ch. 218 read: “An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1986.” Approved April 3, 1986.

Section 3 of S.L. 1990, ch. 62 declared an emergency. Approved March 20, 1990, effective retroactively to January 1, 1990.

Section 2 of S.L. 2002, ch. 240 declared an emergency. Approved March 22, 2002.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

Section 2 of S.L. 2020, ch. 7 declared an emergency and made the amendments to this section retroactive to January 1, 2020. Approved February 11, 2020.

§ 67-6608. Special provision for certain elections and measures. —

(1) The political treasurer for a candidate for a judicial office or a local government office, or for a political committee that is specifically designated to support or oppose a candidate or local ballot measure, is exempt from filing reports under section 67-6607, Idaho Code, unless and until such time as the candidate receives contributions or expends funds in the amount of five hundred dollars (\$500) or more. Within seven (7) calendar days of the five hundred dollar (\$500) threshold being met, the political treasurer for the candidate shall file a cumulative report covering the period from the first contribution or expenditure to the current date and shall file all subsequent reports according to section 67-6607, Idaho Code, regardless of amounts received or expended.

(2) The political treasurer for a political committee that is not specifically designated to support or oppose any candidate or measure, but that receives contributions and makes expenditures for the purpose of supporting or opposing a candidate for a judicial office, a local government office, or a local ballot measure, is exempt from filing reports under [section 67-6607, Idaho Code](#), unless and until such time as the political committee receives contributions or expends funds in the amount of one thousand dollars (\$1,000) or more. Within seven (7) calendar days of the one thousand dollar (\$1,000) threshold being met, the political treasurer for the political committee shall file a cumulative report covering the period from the first contribution or expenditure to the current date and shall file all subsequent reports according to [section 67-6607, Idaho Code](#), regardless of amounts received or expended.

History.

[I.C., § 67-6608](#), as added by 2019, ch. 288, § 7, p. 830; am. 2020, ch. 70, § 1, p. 159.

STATUTORY NOTES

Prior Laws.

Former § 67-6608, which comprised Init. Measure 1974, No. 1, § 8; am. 1977, ch. 225, § 2, p. 670; am. 1983, ch. 151, § 1, p. 405; am. 1992, ch. 196, § 3, p. 605; am. 1993, ch. 203, § 2, p. 557; am. 2004, ch. 284, § 1, p. 801; am. 2006, ch. 22, § 1, p. 79, was repealed by S.L. 2019, ch. 288, § 6, effective January 1, 2020. 67-6608, which comprised Init. Measure 1974, No. 1, § 8; am. 1977, ch. 225, § 2, p. 70; am. 1983, ch. 151, § 1, p. 405; am. 1992, ch. 196, § 3, p. 605; am. 1993, ch. 203, § 2, p. 557; am. 2004, ch. 284, § 1, p. 801; am. 2006, ch. 22, § 1, p. 79, was repealed by S.L. 2019, ch. 288, § 6, effective January 1, 2020.

Amendments.

The 2020 amendment, by ch. 70, substituted “certain elections and measures” for “local elections and measures” in the section heading; inserted “judicial office or a” near the beginning of subsection (1); and substituted “a judicial office, a local government office, or a local ballot measure” for “local government office or local ballot measure” near the middle of the first sentence in subsection (2).

Effective Dates.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

Section 2 of S.L. 2020, ch. 70 declared an emergency. Approved March 9, 2020.

§ 67-6609. Statement as to no contribution or expenditure. — If no contribution is received or expenditure made by or on behalf of a candidate or political committee during a period described in section 67-6607, Idaho Code, the political treasurer for the candidate or political committee shall file with the secretary of state, at the time required by such section of this act for the period, a statement to that effect.

History.

Init. Measure 1974, No. 1, § 9; am. 2019, ch. 288, § 8, p. 830.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 288, substituted “[section 66-6607, Idaho Code](#)” for “section 66-6607 or 67-6608, Idaho Code.”

Compiler’s Notes.

The term “this act” near the end of the section refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

Effective Dates.

Section 26 of S.L. 2019, ch. 288 provided that the amendment of this section should take effect on and after January 1, 2020.

§ 67-6610. Contribution in excess of fifty dollars. — (a) Any person who contributes more than fifty dollars (\$50.00) (including one or more smaller contributions which aggregate more than fifty dollars (\$50.00) in any one calendar year) to a candidate or political committee shall accompany the contribution with a statement of his full name and complete address.

(b) If a political treasurer is offered or receives a payment or contribution of more than fifty dollars (\$50.00), or which together with prior contributions from the same person during that calendar year exceeds fifty dollars (\$50.00), and there is no statement of the full name and complete address of the person making the contribution, the contribution shall be returned to the contributor if his identity can be ascertained. If the contributor's identity cannot be ascertained, the contribution shall be transmitted immediately by the political treasurer who received it to the state controller for deposit in the public school fund [public school permanent endowment fund].

History.

Init. Measure 1974, No. 1, § 10; am. 1994, ch. 180, § 229, p. 420.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

Compiler's Notes.

The bracketed insertion at the end of subsection (b) was added by the compiler to correct the name of the referenced fund. See § 33-902.

The words enclosed in parentheses so appeared in the law as approved.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: "This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of

the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of the section by S.L. 1994, ch. 180, § 229, was effective January 2, 1995.

§ 67-6610A. Limitations on contributions. — (1) Except as provided in subsection (2) of this section, aggregate contributions for a primary election or a general election made by a corporation, political committee, other recognized legal entity or an individual shall be subject to the limitations of this subsection; provided, however, this subsection shall not apply to a candidate contributing or loaning money to his own campaign account.

(a) Aggregate contributions by a corporation, political committee, other recognized legal entity, or an individual to a candidate for the state legislature, judicial office, or local government office, and political committees organized on the candidate's behalf, shall be limited to an amount not to exceed one thousand dollars (\$1,000) for the primary election and an amount not to exceed one thousand dollars (\$1,000) for the general election.

(b) Aggregate contributions for a primary election or a general election by a corporation, political committee, other recognized legal entity or an individual to a candidate for statewide office and political committees organized on the candidate's behalf shall be limited to an amount not to exceed five thousand dollars (\$5,000) for the primary election and an amount not to exceed five thousand dollars (\$5,000) for the general election.

(2) Aggregate contributions for a primary election or for a general election made by a county central committee or by the state central committee of the political parties qualified under [section 34-501, Idaho Code](#), to a candidate for the state legislature and political committees organized on the candidate's behalf shall be limited to an amount not to exceed two thousand dollars (\$2,000) for the primary election and an amount not to exceed two thousand dollars (\$2,000) for the general election. Aggregate contributions for the primary election or the general election by the state central committee of the political parties qualified under [section 34-501, Idaho Code](#), to a candidate for statewide office and political committees organized on the candidate's behalf shall be limited to an amount not to exceed ten thousand dollars (\$10,000) for the primary

election and an amount not to exceed ten thousand dollars (\$10,000) for the general election.

(3) For purposes of this section, “statewide office” shall mean an office in state government that shall appear on the primary or general election ballot throughout the state.

(4) Recall and special elections, for purposes of this section, shall be treated the same as general elections for contribution limits.

(5) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. A contribution of this kind shall be reported as an in-kind contribution at its fair market value and counts toward any applicable contribution limit of the contributor. Contributions shall not include the personal services of volunteers.

(6) For the purposes of contribution limits, the following apply:

(a) A contribution by a political committee with funds that have all been contributed by one (1) person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(b) All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained or controlled by a trade association, labor union or collective bargaining organization shall be considered a contribution from such trade association, labor union or collective bargaining organization.

(c) Two (2) or more entities are treated as a single entity if the entities:

(i) Share the majority of members on their board of directors;

(ii) Share two (2) or more officers;

(iii) Are owned or controlled by the same majority shareholder or shareholders or persons;

(iv) Are in a parent-subsidary relationship; or

(v) Have bylaws so stating.

(7) The provisions of this section are hereby declared to be severable and if any provision of this section or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this section.

History.

I.C., § 67-6610A, as added by 1997, ch. 393, § 3, p. 1249; am. 2004, ch. 19, § 1, p. 21; am. 2006, ch. 23, § 1, p. 80; am. 2012, ch. 162, § 4, p. 437; am. 2019, ch. 288, § 9, p. 830.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 23, added present subsection (6) and redesignated former subsection (6) as present subsection (7).

The 2012 amendment, by ch. 162, added subsection (4) and renumbered the subsequent subsections accordingly.

The 2019 amendment, by ch. 288, in subsection (1), added the paragraph designations, substituted “shall be subject to the limitations of this subsection; provided, however, this subsection shall not apply to a candidate contributing or loaning money to his own campaign account” for “other than the candidate, to a candidate for the state legislature, and political committees organized on the candidate’s behalf” at the end of the introductory paragraph, added “Aggregate contributions by a corporation, political committee, other recognized legal entity, or an individual to a candidate for the state legislature, judicial office, or local government office, and political committees organized on the candidate’s behalf” at the beginning of paragraph (a), and deleted “other than the candidate” following “an individual” in paragraph (b); inserted “and special” near the beginning of subsection (4); deleted former subsection (6), which read: “The contribution limits for the state legislature shall apply to judicial district offices, city offices and county offices regulated by this chapter”; and redesignated former subsections (7) and (8) as subsections (6) and (7).

Effective Dates.

Section 2 of S.L. 2006, ch. 23 declared an emergency. Approved March 11, 2006.

Section 26 of S.L. 2019, ch. 288 provided that the amendment of this section should take effect on and after January 1, 2020.

RESEARCH REFERENCES

ALR. — Construction and application of supreme court's holding in *Citizens United v. Federal Election Com'n*, 130 S. Ct. 876, 175 L. Ed. 2d 753, 187 L.R.R.M. (BNA) 2961, 159 Lab. Cas. (CCH) P 10166 (2010), That government may not prohibit independent and indirect corporate expenditures on political speech. 65 A.L.R.6th 503.

§ 67-6610B. Retiring debt. — (1) If a political committee organized on behalf of a candidate has unpaid debt at the end of the reporting periods specified in section 67-6607, Idaho Code, then the committee may accept additional contributions to retire such unpaid debt, provided the contributions do not exceed the applicable contribution limits prescribed.

(2) For the purposes of this section, “unpaid debt” means any unpaid monetary obligation incurred by the political committee as listed on the reports filed through the postelection report period minus any cash balance reported on the postelection report. Outstanding loans are considered a type of “unpaid debt.”

History.

I.C., § 67-6610B, as added by 2004, ch. 277, § 1, p. 767; am. 2019, ch. 288, § 10, p. 830.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 288, added the subsection designations; and substituted “[section 67-6607, Idaho Code](#)” for “section 67-6607(a)(2) or 67-6607(a)(6), Idaho Code” near the middle of subsection (1).

Effective Dates.

Section 4 of S.L. 2004, ch. 277 declared an emergency. Approved March 23, 2004.

Section 26 of S.L. 2019, ch. 288 provided that the amendment of this section should take effect on and after January 1, 2020.

§ 67-6610C. Use of contributed amounts for certain purposes. — (1) Permitted uses. A contribution accepted by a candidate may be used by the candidate:

- (a) For expenditures in connection with the campaign for public office of the candidate;
- (b) For ordinary and necessary expenses incurred in connection with duties of the individual as a holder of public office;
- (c) For contributions to an organization described in [section 170\(c\) of the Internal Revenue Code of 1986](#);
- (d) For transfers, without limitation, to a national, state or local committee of a political party;
- (e) For donations to state and local candidates subject to the provisions of state law; or
- (f) For any other lawful purpose unless prohibited by subsection (2) of this section.

(2) Prohibited use.

- (a) In general. A contribution shall not be converted by any person to personal use.
- (b) Conversion. For the purposes of subsection (2)(a) of this section, a contribution shall be considered to be converted to personal use if the contribution is used to fulfill any commitment, obligation or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of public office, including:
 - (i) A home mortgage, rent or utility payment;
 - (ii) A clothing purchase except for items of de minimis value such as campaign shirts or hats;
 - (iii) A noncampaign or nonofficeholder related automobile expense;
 - (iv) A country club membership;
 - (v) A vacation or other noncampaign-related trip;

- (vi) A tuition payment;
- (vii) Admission to a sporting event, concert, theater or other form of entertainment not associated with an election campaign;
- (viii) Dues, fees and other payments to a health club or recreational facility; and
- (ix) Meals, groceries or other food expense, except for tickets to meals that the candidate attends solely for the purpose of enhancing the candidacy of another person or meal expenses which are incurred as part of a campaign activity or as part of a function that is related to the candidate's or officeholder's responsibilities.

History.

I.C., § 67-6610C, as added by 2006, ch. 36, § 2, p. 99.

STATUTORY NOTES

Prior Laws.

Former § 67-6610C, which comprised I.C., § 67-6610C, as added by 1997, ch. 393, § 7, p. 1249; am. 2004, ch. 277, § 2, p. 767 and relating to use of contributions for certain purposes by candidate or officeholder, was repealed by S.L. 2006, ch. 36, § 1.

Federal References.

Section 170(c) of the Internal Revenue Code, referred to in paragraph (1) (c), is compiled as 26 U.S.C.S. § 170(c).

Effective Dates.

Section 8 of S.L. 1997, ch. 393 provided that the act should take effect on and after July 1, 1997. It also provided: "If an individual or other recognized legal entity has exceeded the legal contribution limits prescribed in Section 3 of this act prior to the effective date of this act, no penalty shall apply as long as the individual or other recognized legal entity makes no further contributions to the candidate or political committee for the primary election or for the general election. Candidates shall be allowed to carry fund balances from one election to another and not have them count as a contribution as provided in Section 3 of this act."

Section 4 of S.L. 2004, ch. 277 declared an emergency. Approved March 23, 2004.

Section 3 of S.L. 2006, ch. 36 declared an emergency. Approved March 11, 2006.

§ 67-6611. Independent expenditures. — (1) Each person who makes independent expenditures in an aggregate amount exceeding one hundred dollars (\$100) in support of or in opposition to any one (1) candidate, political committee or measure, shall file a statement of the expenditure with the secretary of state.

(2) Statements shall be filed with the secretary of state, not less than seven (7) days prior to the primary and general election and thirty (30) days after the primary and general election.

(3) The statement shall contain the following information: (a) the name and address of any person to whom an expenditure in excess of fifty dollars (\$50.00) has been made by any such person in support of or in opposition to any such candidate or issue during the reporting period, together with the amount, date and purpose of each such expenditure; and (b) the total sum of all expenditures made in support of or in opposition to any such candidate or measure.

(4) In addition to the requirements set forth in subsections (1) and (2) of this section, each person who makes independent expenditures in an aggregate amount of one thousand dollars (\$1,000) or more after the sixteenth day before, but more than forty-eight (48) hours before, any primary or general election, shall file a written statement of the expenditure with the secretary of state not more than forty-eight (48) hours from the time of such expenditure. The statement shall include the information required in subsection (3) of this section.

History.

I.C., § 67-6611, as added by 1997, ch. 393, § 5, p. 1249; am. 1999, ch. 29, § 1, p. 41; am. 2003, ch. 20, § 1, p. 76; am. 2004, ch. 148, § 1, p. 478.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Prior Laws.

Former § 67-6611, which comprised Init. Measure 1974, No. 1, § 11; am. 1976, ch. 228, § 1, p. 813, was repealed by S.L. 1997, ch. 393, § 4, effective July 1, 1997.

Effective Dates.

Section 2 of S.L. 2004, ch. 148 declared an emergency. Approved March 23, 2004.

§ 67-6612. Disclosure of payments made to signature gatherers. —

(1) Any person who pays or provides other valuable consideration in an aggregate amount of one hundred dollars (\$100) or more to another person or persons, in exchange for their actions or intended actions of gathering signatures on a ballot initiative petition or referendum, shall file a statement of the expenditure with the secretary of state.

(2) The provisions of this section shall apply beginning on the date that the ballot initiative or referendum petitioners receive from the secretary of state the official ballot title for which the person is paying to have signatures gathered and shall continue for as long as the filer makes payments to a signature gatherer or gatherers.

(3) Statements shall be filed on or before the twentieth day of the month following the month during which the payments to the signature gatherers were made.

(4) The statement shall contain the following information:

(a) The name and address of any signature gatherer to whom a payment in excess of fifty dollars (\$50.00) has been made during the reported month; and

(b) The total sum of all payments made to signature gatherers in the aggregate during the reported month.

(5) In addition to the statements filed under subsection (3) of this section, any person who pays a signature gatherer or gatherers the aggregate amount of one thousand dollars (\$1,000) or more during the fourteen (14) days prior to the election shall file a notice of the expenditures with the secretary of state not more than forty-eight (48) hours from the time of the expenditure. The notice shall include the information required under subsection (4) of this section.

History.

I.C., § 67-6612, as added by 2020, ch. 336, § 4, p. 977.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Prior Laws.

Former § 67-6612, Contents of reports, which comprised I.C., § § 67-6612, as added by 1977, ch. 180, § 3, p. 502, was repealed by S.L. 2019, ch. 288, § 11, effective January 1, 2020. See now § 67-6607.

Another former § 67-6612 which comprised Init. Measure 1974, No. 1, § 12 was repealed by S.L. 1977, ch. 180, § 2.

Compiler's Notes.

Section 5 of S.L. 2020, ch. 336 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 67-6613. Commercial reporting. — Each newspaper, periodical, broadcasting station, direct mailing company, printer and advertising agency which accepts expenditures from a political treasurer shall keep a current record (available to the public) listing the amounts paid and the obligations incurred by each candidate, political committee or political treasurer to such newspaper, periodical, broadcasting station, direct mailing company, printer or advertising agency.

History.

Init. Measure 1974, No. 1, § 13.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as approved.

§ 67-6614. Identification of source of contributions and expenditures.

— No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one (1) person through an agent, relative or other person in such a manner as to conceal the identity of the source of the contribution.

History.

Init. Measure 1974, No. 1, § 14.

§ 67-6614A. Publication or distribution of political statements. — Whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election, approval or defeat of a candidate, measure or person standing for election to the position of precinct committeeman through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, the person responsible for such communication shall be clearly indicated on such communication.

History.

I.C., § 67-6614A, as added by 1977, ch. 180, § 4, p. 502; am. 1992, ch. 196, § 4, p. 605; am. 2016, ch. 304, § 1, p. 858.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 304, inserted “or person standing for election to the position of precinct committeeman” near the middle of the section.

Effective Dates.

Section 5 of S.L. 1992, ch. 196 declared an emergency. Approved April 8, 1992.

Section 2 of S.L. 2016, ch. 304 declared an emergency. Approved March 30, 2016.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of statute or regulatory action respecting political advertising — Print media cases. [51 A.L.R.6th 359](#).

Constitutionality, construction, and application of statute or regulatory activity respecting political advertising nonprint media cases, or cases implicating both print and nonprint media. [53 A.L.R.6th 491](#).

§ 67-6615. Inspection by secretary of state and county clerks. — (1) It is the intent of the legislature to consolidate filings for all offices and measures in a central online database established by the secretary of state.

(2) The secretary of state shall inspect each statement filed pursuant to this chapter for statewide, legislative, and judicial district offices or measures, and the county clerk shall inspect each statement filed for all local government offices or measures for which the county is the home county, as defined in [section 34-1401, Idaho Code](#), within two (2) days after the date it is filed. He shall notify a person required to file a statement under this chapter immediately if: (a) It appears that the person has failed to file a statement as required by law or that a statement filed by the person does not conform to law; or (b) A written complaint is filed with the secretary of state or county clerk by any registered voter alleging that a statement filed with the secretary of state does not conform to law or to the truth or that a person has failed to file a statement required by law.

History.

Init. Measure 1974, No. 1, § 15; am. 2019, ch. 288, § 12, p. 830.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2019 amendment, by ch. 288, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

§ 67-6616. Examination of statements. — Within three (3) months after the date of each election, the secretary of state shall examine such statement filed pursuant to this chapter for statewide, legislative, and judicial district offices or measures, and the county clerk shall inspect each statement filed for all local government offices or measures for which the county is the home county, as defined in section 34-1401, Idaho Code; and referring to the election, determine whether the statement conforms to law. Such examinations shall include a comparison of reports and statements received by the secretary of state pursuant to sections 67-6607 through 67-6609, 67-6611, and 67-6614, Idaho Code. The secretary of state or county clerk may require any person to answer in writing and under oath or affirmation any question within the knowledge of that person concerning the source of any contribution.

History.

Init. Measure 1974, No. 1, § 16; am. 2019, ch. 288, § 13, p. 830.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2019 amendment, by ch. 288, rewrote the section, which formerly read: “Within three (3) months after the date of each election, the Secretary of State shall examine such statement filed with his office under this act; and referring to the election, to determine whether the statement conforms to law. Such examinations shall include a comparison of reports and statements received by the Secretary of State pursuant to sections 67-6607 — 67-6609, 67-6611, 67-6614. The Secretary of State may require any person to answer in writing and under oath or affirmation any question within the knowledge of that person concerning the source of any contribution.”

Effective Dates.

Section 26 of S.L. 2019, ch. 288 provided that the act should take effect on and after January 1, 2020.

§ 67-6617. Registration of lobbyists. — (1) Before doing any lobbying, or within thirty (30) days after being employed, designated, or contracted as a lobbyist, whichever occurs first, a lobbyist shall register by filing with the secretary of state a lobbyist registration statement, in such detail as the secretary of state shall prescribe, accompanied by payment of a registration fee of ten dollars (\$10.00) to be deposited by the secretary of state in the state treasury. The lobbyist registration statement shall include:

(a) The lobbyist's name, permanent business address, and any temporary residential and business address in Ada county during the legislative session;

(b) The name, address, and notification e-mail address to be used under [section 67-6619\(2\), Idaho Code](#), for the employer, client, or designated contact, as well as the general nature of the occupation or business of the lobbyist's employer or client, and the duration of his employment or contract;

(c) In the case of a designated lobbyist for a corporate entity as described under [section 67-6618\(7\), Idaho Code](#), the name and notification e-mail address of the corporate entity that is already registered as a lobbyist and for whom the designated lobbyist will be reporting all corporate and employee activities;

(d) Whether the person from whom he receives compensation employs him solely as a lobbyist or whether he is a regular employee performing services for his employer which include but are not limited to lobbying of legislation;

(e) The general subject or subjects of the lobbyist's legislative interest; and

(f) The name and address of the person who will have custody of the accounts, bills, receipts, books, papers, and documents required to be kept under this act.

(2) Any lobbyist who receives or is to receive compensation from more than one (1) person for his services as a lobbyist shall file a separate notice of representation, accompanied by the fee of ten dollars (\$10.00) for each

separate notice of representation, with respect to each such person; except that where a lobbyist whose fee for acting as such in respect to the same legislation or type of legislation is, or is to be, paid or contributed by more than one (1) person, then such lobbyist may file a single statement, in which he shall detail the name, business address and general occupation of each person so paying or contributing.

(3) Whenever a change, modification, or termination of the lobbyist's employment or contract occurs, the lobbyist shall, within one (1) week of such change, modification or termination, furnish full information regarding the same by filing with the secretary of state an amended registration statement.

(4) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on or before each January 10, and failure to do so shall terminate his registration.

History.

Init. Measure 1974, No. 1, § 17; am. 1976, ch. 229, § 1, p. 814; am. 1999, ch. 176, § 2, p. 476; am. 2019, ch. 290, § 3, p. 849.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 290, redesignated the existing paragraphs; rewrote subsection (1); and inserted “or contract” in subsection (3).

Compiler's Notes.

The term “this act” in paragraph (1)(f) refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

The words enclosed in parentheses so appeared in the law as enacted.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts. 35 A.L.R.6th 1.

§ 67-6618. Exemption from registration. — The following persons and activities shall be exempt from registration and reporting under sections 67-6617 and 67-6619, Idaho Code:

(1) Persons who limit their lobbying activities to appearances before public sessions of committees of the legislature or to appearances or participation in public meetings, public hearings or public proceedings held or initiated by executive officials or their employees.

(2) Persons who are employees of an entity engaged in the business of publishing, broadcasting or televising, while engaged in the gathering and dissemination of news and comment thereon to the general public in the ordinary course of business.

(3) Persons who do not receive any compensation for lobbying and persons whose compensation for lobbying does not exceed two hundred fifty dollars (\$250) in the aggregate during any calendar quarter, including persons who lobby on behalf of their employer or employers, and the lobbying activity represents less than the equivalent of two hundred fifty dollars (\$250) of the employee's time per calendar year quarter, based on an hourly proration of said employee's compensation.

(4) Members of a trade association who are acting on behalf of and at the request of the trade association, if such association has registered as a lobbyist pursuant to this chapter, and if any expenditures are reported by the association pursuant to [section 67-6619, Idaho Code](#).

(5) Elected state officers and state executive officers appointed by the governor subject to confirmation by the senate; elected officials of political subdivisions of the state of Idaho, acting in their official capacity.

(6) A person who represents a bona fide church (of which he is a member) solely for the purpose of protecting the constitutional right to the free exercise of religion.

(7)(a) Employees of a corporate entity, if such corporate entity:

(i) Has registered as a lobbyist pursuant to this chapter;

- (ii) Has appointed one (1) or more of its employees or contractors as its official designated lobbyist; and
 - (iii) The person so appointed by the corporate entity has completed the designated lobbyist registration.
- (b) The corporate entity shall, through its designated lobbyist, fully and accurately report all expenditures made by employees who are exempt hereunder, in the manner and at the times required by [section 67-6618, Idaho Code](#), and, in addition thereto, shall report the names of all employees who make expenditures in the aggregate sum of fifty dollars (\$50.00) or more during any calendar year on behalf of the corporate entity's lobbying activities.

History.

Init. Measure 1974, No. 1, § 18; am. 1976, ch. 362, § 1, p. 1194; am. 1998, ch. 242, § 1, p. 801; am. 2006, ch. 106, § 3, p. 294; am. 2019, ch. 290, § 4, p. 849.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 106, added “or to appearances or participation in public meetings, public hearings or public proceedings held or initiated by executive officials or their employees” at the end of subsection (a); and redesignated former subsections (f)(1)(a) to (c) as present subsections (f)(1)(i) to (iii).

The 2019 amendment, by ch. 290, redesignated the existing paragraphs; added present subsection (4) and redesignated the subsections accordingly; and rewrote subsection (7).

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

OPINIONS OF ATTORNEY GENERAL

State Officers or Employees.

With the exception of elected state officials and state officers appointed by the governor and approved by the senate, a state officer or employee who “proffers gifts and/or benefits to legislators and/or executive officials” is generally required to register and report as a lobbyist. There are two exceptions: for employees whose compensation for time spent lobbying does not exceed \$250 (who need not register or report) and for lobbying expenditures that do not exceed \$105 per person (who need not report upon whose behalf the expenditures were made). OAG 2015-1.

RESEARCH REFERENCES

Idaho Law Review. — Behind the Times: A Comparative Argument that the State of Idaho Should Combat the Revolving Door Effect with Waiting Period Legislation, Comment. 52 Idaho L. Rev. 639 (2016).

ALR. — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts. [35 A.L.R.6th 1](#).

§ 67-6619. Reporting by lobbyists. — (1) Any lobbyist registered under section 67-6617, Idaho Code, shall file with the secretary of state an annual report of his lobbying activities signed by the lobbyist. The reports shall be made in the form and manner prescribed by the secretary of state and shall be filed on January 31 of each year. In addition to the annual report, while the legislature is in session, every registered lobbyist shall file interim monthly periodic reports for each month or portion thereof that the legislature is in session, which shall be filed within fifteen (15) days of the first day of the month for the activities of the month just past, provided however, that any lobbyist covered under this chapter whose lobbying activities are confined only to executive officials shall be required to file interim periodic reports semiannually on January 31 and July 31.

(2) Once a lobbyist has filed an annual or semiannual report, each person identified as an employer, client, or designated contact on the report will be electronically notified that the report has been filed by the lobbyist, using the contact information provided for the employer, client, or designated contact upon registration.

(3) Each annual, semiannual and monthly periodic report shall contain:

(a) The total of all expenditures made or incurred on behalf of such lobbyist by the lobbyist's employer, employers, client, or clients, not including payments made directly to the lobbyist, during the period covered by the report. The totals shall be segregated according to financial category including, but not limited to: entertainment, food and refreshment, honoraria, travel, lodging, advertising and other like expenditures. Reimbursed personal living and travel expenses of a lobbyist made or incurred directly or indirectly for any lobbying purpose need not be reported.

(b) The name of any legislator or executive official to whom or for whose benefit on any one (1) occasion an expenditure in excess of one hundred dollars (\$100) per person for the purpose of lobbying, is made or incurred and the date, name of payee, purpose and amount of such expenditure. Expenditures for the benefit of the members of the household of a

legislator or executive official shall also be itemized if such expenditure exceeds the amount listed in this subsection.

(c) In the case of a lobbyist employed by or contracted with more than one (1) employer or client, the proportionate amount of such expenditures in each category made or incurred on behalf of each of his employers or clients.

(d) The subject matter of proposed legislation and the number of each senate or house bill, resolution, memorial or other legislative activity or any rule, ratemaking decision, procurement, contract, bid or bid process, financial services agreement or bond in which the lobbyist has been engaged in supporting or opposing during the reporting period; provided that in the case of appropriations bills, the lobbyist shall enumerate the specific section or sections which he supported or opposed.

(e) The itemization threshold in subsection (3)(b) of this section shall be adjusted biennially by directive of the secretary of state, using consumer price index data compiled by the United States department of labor.

(4) Reports required to be filed under the provisions of this section shall be filed online with the secretary of state, except as provided in [section 67-6623, Idaho Code](#), by no later than midnight on the date the filing is due.

History.

[I.C., § 67-6619](#), as added by 2008, ch. 306, § 3, p. 850; am. 2010, ch. 22, § 2, p. 38; am. 2019, ch. 290, § 5, p. 849.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Prior Laws.

Former § 67-6619, which comprised Init. Measure 1974, No. 1, § 19; am. 1976, ch. 363, § 1, p. 1196; am. 1978, ch. 146, § 1, p. 327; am. 1983, ch. 105, § 1, p. 225; am. 1983, ch. 208, § 1, p. 561; am. 1999, ch. 176, § 3, p. 476; am. 2006, ch. 106, § 4, p. 294, was repealed by S.L 2008, ch. 306, § 2.

Amendments.

The 2010 amendment, by ch. 22, added subsection (3).

The 2019 amendment, by ch. 290, in subsection (1), substituted “the lobbyist” for “both the lobbyist and the lobbyist’s employer or employers” at the end of the first sentence and, in the last sentence, deleted “which reports need to be signed only by the lobbyist and” preceding “which shall be filed” near the beginning and “which reports need to be signed by the lobbyist and the lobbyist’s employee or employers” at the end; added present subsection (2) and redesignated the remaining subsections accordingly; in present subsection (3), substituted “employer, employers, client, or clients” for “employer or employers” near the end of the first sentence in paragraph (a), substituted “excess of one hundred dollars (\$100) per person” for “excess of: (i) seventy-five dollars (\$75.00) per person from 2008 through December 31, 2010, and (ii) in excess of one hundred dollars (\$100) per person on and after January 1, 2011” near the middle of paragraph (b), in paragraph (c), inserted “or contracted with” near the beginning, inserted “or client” near the middle, and added “or clients” at the end, and, in paragraph (e), substituted “subsection (3)(b) of this section” for “subsection (2)(b) of this section”; and rewrote present subsection (4), which formerly read: “Reports provided by this section to be filed under the provisions of this section may be filed by means of an electronic facsimile transmission machine and may be filed by other electronic means as approved by the secretary of state.”

Compiler’s Notes.

For further information at the consumer price index, referred to in paragraph (3)(e), see <https://www.bls.gov/cpi>.

Effective Dates.

Section 4 of S.L. 2010, ch. 22 declared an emergency. Approved February 26, 2010.

OPINIONS OF ATTORNEY GENERAL

State Officers or Employees.

With the exception of elected state officials and state officers appointed by the governor and approved by the senate, a state officer or employee who “proffers gifts and/or benefits to legislators and/or executive officials”

is generally required to register and report as a lobbyist. There are two exceptions: for employees whose compensation for time spent lobbying does not exceed \$250 (who need not register or report) and for lobbying expenditures that do not exceed \$105 per person (who need not report upon whose behalf the expenditures were made). OAG 2015-1.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state and municipal enactments regulating lobbying and of lobbying contracts. [35 A.L.R.6th 1](#).

§ 67-6619A. Reports by state entities. — Any office or agency of state government or a state funded educational institution that offers gifts of any kind through interaction with the legislative or executive department of state government shall file the same reports lobbyists are required to file pursuant to section 67-6619, Idaho Code, with the exception of reporting under section 67-6619(3)(d), Idaho Code, unless the office, agency or state funded educational institution is otherwise represented by a lobbyist who files all necessary reports and documentation as provided by law.

History.

I.C., § 67-6619A, as added by 2016, ch. 345, § 1, p. 997; am. 2019, ch. 290, § 6, p. 849.

STATUTORY NOTES

Amendments.

The 2019 amendment, by ch. 290, substituted “**section 67-6619(3)(d), Idaho Code**” for “section 67-6619(2)(d)” near the middle of the section.

§ 67-6620. Employment of unregistered persons. — It shall be a violation of this act for any person to employ for pay or any consideration, or pay or agree to pay any compensation to, a person to lobby who is not registered or exempt from registration under this act unless such person registers as a lobbyist as provided by this act as soon as practicable after such employment or payment, or agreement to pay, compensation.

History.

Init. Measure 1974, No. 1, § 20.

STATUTORY NOTES

Compiler's Notes.

The term “this act” throughout this section refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

§ 67-6621. Duties of lobbyists. — A person required to register as a lobbyist under this chapter shall also have the following obligations, the violation of which shall constitute cause for revocation of his registration, and may subject such person, and such person's employer or client, if such employer or client aids, abets, ratifies or confirms any such act, to other civil liabilities, as provided by this chapter:

(1) Such persons shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the financial reports required to be made under this chapter for a period of at least three (3) years from the date of the filing of the statement containing such items, which accounts, bills, receipts, books, papers and documents shall be made available for inspection by the secretary of state at any reasonable time during such three (3) year period; provided, however, that if a lobbyist is required under the terms of his employment contract to turn any records over to his employer or client, responsibility for the preservation of such records under this subsection shall rest with such employer or client.

(2) In addition, a person required to register as a lobbyist shall not:

- (a) Engage in any activity as a lobbyist before registering as such;
- (b) Knowingly deceive or attempt to deceive any legislator to any fact pertaining to any pending or proposed legislation;
- (c) Cause or influence the introduction of any bill or amendment thereto for the purpose of thereafter being employed to secure its defeat;
- (d) Knowingly represent an interest adverse to any of his employers or clients without first obtaining such employers' or clients' consent thereto after full disclosure to such employers or clients of such adverse interest;
- (e) Exercise any economic reprisal, extortion, or unlawful retaliation upon any legislator by reason of such legislator's position with respect to, or his vote upon, any pending or proposed legislation;
- (f) Accept any employment as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending legislation or upon any other contingency connected with the action of

the legislature or of either branch thereof or of any committee thereof. This contingent fee prohibition shall also apply to lobbying activities that pertain to communications with executive officials as described in [section 67-6602\(9\), Idaho Code](#).

History.

Init. Measure 1974, No. 1, § 21; am. 2015, ch. 244, § 60, p. 1008; am. 2015, ch. 284, § 3, p. 1151; am. 2017, ch. 142, § 1, p. 336; am. 2018, ch. 169, § 22, p. 344; am. 2019, ch. 288, § 14, p. 830; am. 2019, ch. 290, § 7, p. 849; am. 2020, ch. 82, § 38, p. 174.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

This section was amended by two 2015 acts which appear to be compatible and have been compiled together.

The 2015 amendment, by ch. 284, substituted “constitute” for “contitute” near the middle of the introductory paragraph; and added the last sentence in paragraph (b)(6).

The 2015 amendment, by ch. 244, substituted “constitute” for “constitute” near the middle of the introductory paragraph.

The 2017 amendment, by ch. 142, redesignated the former alphabetical subsection designations to numbers and substituted “67-6602(7), Idaho Code” for “67-6602(g), Idaho Code” at the end of the section.

The 2018 amendment, by ch. 169, substituted “section 67-6602(g)” for “section 67-6602(7)” updated a reference at the end of paragraph (2)(f).

This section was amended by two 2019 acts which appear to be compatible and have been compiled together.

The 2019 amendment, by ch. 288, substituted “chapter” for “act” throughout the section; and substituted “[section 67-6602\(7\), Idaho Code](#)” for “[section 67-6603\(g\), Idaho Code](#)” at the end of paragraph (2)(f).

The 2019 amendment, by ch. 290, inserted “or client” or similar language throughout and substituted “[section 67-6602\(9\), Idaho Code](#)” for “[section 67-6602\(g\), Idaho Code](#)” at the end of paragraph (2)(f).

The 2020 amendment, by ch. 82, deleted extraneous data, resultant from the multiple 2019 amendments of this section.

Effective Dates.

Section 26 of S.L. 2019, ch. 288 provided that the amendment of this section should take effect on and after January 1, 2020.

§ 67-6622. Docket — Contents — Reports to legislature — Subjects of legislation — Written authorization. — The Secretary of State shall prepare and keep a docket in which shall be entered the name and business address of each lobbyist and the name and business address of his employer or employers, and the subject or subjects of legislation (by bill number, if available) to which the employment relates, which information shall also be indexed by names of employers of lobbyists. Such docket shall be a public record and open to the inspection of any citizen upon demand at any time during the regular business hours of the office of the Secretary of State. Beginning with the first week following the beginning of any regular or special session of the legislature and on every Wednesday thereafter for the duration of such session, the Secretary of State shall from his records report to each house of the legislature the names of lobbyists registered under this act not previously reported, the names of the persons whom they represent as such lobbyist, and subject of legislation (by bill number, if available) in which they are interested.

History.

Init. Measure 1974, No. 1, § 22.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Compiler's Notes.

The term “this act” in the last sentence refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-6623. Duties of secretary of state and county clerks. — (1) The secretary of state and each county clerk is charged with enforcement of the provisions of this chapter.

(2) In addition to duties otherwise prescribed in this section, it shall be the duty of the secretary of state:

- (a) To prescribe forms for statements and other information required to be filed by this act, and to furnish such forms and instruction manual to persons required to file such statements and information;
- (b) To make statements and other information filed with him available for public inspection and copying during regular office hours, and to make copying facilities available at a charge not to exceed actual cost;
- (c) To preserve such statements and other information for a period of four (4) years from date of receipt;
- (d) With respect to statewide, legislative, and judicial district offices and measures, to make investigations of statements filed under the provisions of this chapter, and with respect to alleged failures to file any statement required under the provisions of this chapter, and upon complaint by any person with respect to alleged violations of any part of this chapter;
- (e) To report suspected violations of law to the appropriate law enforcement authorities;
- (f) To prescribe and publish rules in accordance with the provisions of chapter 52, title 67, Idaho Code, and to take such other actions as may be appropriate to carry out the provisions of this chapter;
- (g) To require and prescribe methods for the filing of reports in an online database established by the secretary of state's office for the filing and publication of all reports required pursuant to this chapter. The online database shall accommodate the filings of all state and local government candidates, political committees, measures, and lobbyists. The online database shall be accessible on the secretary of state's website and be searchable by the public by address, candidate, committee, contribution, contributor, date, expense, office, party, purpose, and any other content

deemed appropriate by the secretary of state. The secretary of state may, on an individual basis, grant a hardship waiver and accept a report required by this chapter in another format specified by the secretary of state, which will be entered into the online database by the secretary of state within three (3) days of filing.

(3) It shall be the duty of the county clerk with respect to all local government offices or measures for which the county is the home county, as defined in [section 34-1401, Idaho Code](#), to make investigations of statements required to be filed under this chapter of alleged failures to file any required statement and of any complaint filed by any person of an alleged violation of any part of this chapter with respect to local government offices or measures in the county. The county clerk shall report any suspected violations of this chapter pertaining to a local government office or measure to the county prosecutor.

History.

Init. Measure 1974, No. 1, § 23; am. 1977, ch. 180, § 5, p. 502; am. 2010, ch. 22, § 3, p. 38; am. 2017, ch. 142, § 2, p. 336; am. 2018, ch. 2, § 1, p. 6; am. 2019, ch. 288, § 15, p. 830.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2010 amendment, by ch. 22, in subsection (f), deleted “and regulations” after “publish rules”; and added subsection (g).

The 2017 amendment, by ch. 142, redesignated the former alphabetical subsection designations as numbers; rewrote subsection (7), which formerly read: “To prescribe methods of the filing of reports by electronic means”; and added subsection (8).

The 2018 amendment, by ch. 2, rewrote subsection (7), which formerly read: “To require and prescribe methods for the filing of reports in an electronic format to ensure the prompt filing of reports with county clerks, city clerks and clerks of special districts. The receiving authority may, on an

individual basis, grant a hardship waiver and accept a report required by this chapter in another format specified by the secretary of state.”

The 2019 amendment, by ch. 288, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler’s Notes.

The term “this act” in paragraph (2)(a) refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

Effective Dates.

Section 4 of S.L. 2010, ch. 22 declared an emergency. Approved February 26, 2010.

Section 2 of S.L. 2018, ch. 2 declared an emergency and made this section retroactive to July 1, 2017. Approved February 7, 2018.

Section 26 of S.L. 2019, ch. 288 provided that the amendment of this section should take effect on and after January 1, 2020.

§ 67-6624. Statements to be certified. — All statements required to be filed with the secretary of state under this act shall be signed and certified as true and correct by the person required to file the same. Electronic signatures and certifications shall be governed by the uniform electronic transactions act, chapter 50, title 28, Idaho Code.

History.

Init. Measure 1974, No. 1, § 24; am. 2017, ch. 142, § 3, p. 336.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Amendments.

The 2017 amendment, by ch. 142, added the last sentence.

Compiler's Notes.

The term “this act” near the middle of this section refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

§ 67-6625. Violations — Civil fine — Misdemeanor penalty — Prosecution — Limitation — Venue. — (1) Any person who violates the provisions of sections 67-6603, 67-6604, 67-6606 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(1), 67-6624, 67-6627 or 67-6628, Idaho Code, shall be liable for a civil fine not to exceed two hundred fifty dollars (\$250) if an individual, and not more than two thousand five hundred dollars (\$2,500) if a person other than an individual. The burden of proof for such civil liability shall be met by showing a preponderance of the evidence.

(2) Any person who violates section 67-6605 or 67-6621(2), Idaho Code, and any person who knowingly and willfully violates sections 67-6603 through 67-6614A, 67-6617, 67-6619, 67-6620, 67-6621(1), 67-6624, 67-6627 or 67-6628, Idaho Code, is guilty of a misdemeanor and, upon conviction, in addition to the fines set forth in subsection (1) of this section, may be imprisoned for not more than six (6) months or be both fined and imprisoned.

(3) The attorney general or the appropriate prosecuting attorney may prosecute any violations of this act.

(4) Prosecution for violation of this act must be commenced within two (2) years after the date on which the violation occurred.

(5) Venue for prosecution under the provisions of this chapter shall be in the county of residence of the defendant if the defendant is a resident of the state of Idaho, otherwise venue shall be in Ada county.

History.

Init. Measure 1974, No. 1, § 25; am. 1976, ch. 227, § 1, p. 812; am. 1977, ch. 169, § 1, p. 434; am. 1978, ch. 43, § 1, p. 77; am. 1997, ch. 393, § 6, p. 1249; am. 2001, ch. 106, § 2, p. 349; am. 2005, ch. 254, § 3, p. 777; am. 2017, ch. 142, § 4, p. 336.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Amendments.

The 2017 amendment, by ch. 142, redesignated the former alphabetical subsection designations as numbers and updated the list of code sections in subsections (1) and (2), in light of the 2017 amendments of chapter 66, title 67, Idaho Code.

Compiler's Notes.

The term “this act” in subsections (3) and (4) refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

§ 67-6625A. Late filing of statement or report — Fees. — (1) If any person fails to file a report or statement required under this chapter on or before a specified date, he shall be liable to the secretary of state for deposit in the general fund in the amount of fifty dollars (\$50.00) per day beginning forty-eight (48) hours after the deadline until the statement or report is filed. The secretary of state or the county clerk shall notify the person and his treasurer, if any, that a fine has been assessed and will continue to accrue until the report or statement has been filed. The notification shall be made by telephone or electronic means within twenty-four (24) hours of the missed filing deadline.

(2) The remedy provided in this section is cumulative and does not exclude any other remedy or penalty prescribed in [section 67-6625, Idaho Code](#).

History.

[I.C., § 67-6625A](#), as added by 1977, ch. 169, § 2, p. 434; am. 1993, ch. 203, § 3, p. 557; am. 2019, ch. 288, § 16, p. 830.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Secretary of state, § 67-901 et seq.

Amendments.

The 2019 amendment, by ch. 288, rewrote the section to the extent that a detailed comparison is impracticable.

Effective Dates.

Section 26 of S.L. 2019, ch. 288 provided that the amendment of this section should take effect on and after January 1, 2020.

§ 67-6626. Injunctions. — The district courts of this state shall have original jurisdiction to issue injunctions to enforce the provisions of this chapter upon application by any citizen of this state, by the secretary of state or by the county clerk. The court may in its discretion require the citizen plaintiff to file a written complaint with the secretary of state or county clerk prior to seeking injunctive relief. A successful plaintiff is entitled to be reimbursed for reasonable costs of litigation, including reasonable attorney's fees, by the person or persons named defendant in said injunctive action. A successful defendant is entitled to be reimbursed for reasonable costs of litigation, including reasonable attorney's fees, if the court determines that plaintiff's action was without substantial merit.

History.

Init. Measure 1974, No. 1, § 26; am. 2019, ch. 288, § 17, p. 830.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

Amendments.

The 2019 amendment, by ch. 288, rewrote the first sentence, which formerly read: "The district courts of this state shall have original jurisdiction to issue injunctions to enforce the provisions of this act upon application by any citizen of this state or by the Secretary of State"; and substituted "secretary of state or county clerk" for "Secretary of State" in the second sentence.

Effective Dates.

Section 26 of S.L. 2019, ch. 288 provided that the amendment of this section should take effect on and after January 1, 2020.

§ 67-6627. Persuasive poll concerning candidate must identify person or entity paying for poll. — (1) If a person, candidate, political party or political committee requests or compensates a person to:

(a) Conduct or cause to be conducted a persuasive poll by telephone concerning a candidate; or (b) Produce automated or computerized messages by telephone to conduct a persuasive poll concerning a candidate.

The person conducting the poll shall, at the end of the poll, disclose the name and telephone number of the person, candidate, political party or political committee that requested or compensated the person for the poll.

(2) As used in this section, “persuasive poll” means the canvassing of persons, by means other than an established method of scientific sampling, by asking questions or other information concerning a candidate which is designed to provide information that is designed to advocate the election, approval or defeat of a candidate or measure. The term does not include a poll that is conducted only to measure the public’s opinion about or reaction to an issue, fact or theme.

(3) A violation of the provisions of this section shall be punishable as provided in [section 67-6625, Idaho Code](#).

History.

[I.C., § 67-6629](#), as added by 2000, ch. 153, § 1, p. 388; am. 2001, ch. 106, § 1, p. 349; am. and redesign. 2017, ch. 142, § 7, p. 336.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 142, redesignated the section from § 67-6629.

Compiler’s Notes.

Former § 67-6627 was redesignated as § 67-6629 by S.L. 2017, ch. 142, § 5.

Effective Dates.

Section 2 of S.L. 2000, ch. 153 declared an emergency. Approved April 3, 2000.

§ 67-6628. Electioneering communications — Statements. — (1) Any person who conducts or transmits any electioneering communication shall be required to file a statement on a form provided by the secretary of state. Contents of the statement shall include the amount spent on such communications, the name and address of the person, and the names and addresses of any persons who contribute fifty dollars (\$50.00) or more to any person described in this section.

(2) Any person that incurs costs in excess of one hundred dollars (\$100) when making an electioneering communication shall file a statement in accordance with the time limits established by [section 67-6611\(2\), Idaho Code](#).

(3) In addition to the requirements of subsection (2) of this section, any person that incurs costs of one thousand dollars (\$1,000) or more when making an electioneering communication shall file a statement as provided in subsection (1) of this section within forty-eight (48) hours of incurring the costs for such communication.

History.

[I.C., § 67-6630](#), as added by 2005, ch. 254, § 2, p. 777; am. and redesign. 2017, ch. 142, § 8, p. 336.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 142, redesignated the section from § 67-6630.

Compiler's Notes.

Former § 67-6628 was redesignated as § 67-6630 by S.L. 2017, ch. 142, § 6.

§ 67-6629. Severability. — If any provisions of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected.

History.

Init. Measure 1974, No. 1, § 27; am. and redesign. 2017, ch. 142, § 5, p. 336.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 142, redesignated the section from § 67-6627.

Compiler's Notes.

The terms “this act” and “the act” refer to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

§ 67-6630. Construction. — The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern.

History.

Init. Measure 1974, No. 1, § 28; am. and redesign. 2017, ch. 142, § 6, p. 336.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 142, redesignated the section from § 67-6628.

Compiler's Notes.

The term “this act” throughout this section refers to 1974 Initiative Measure No. 1, which is compiled as §§ 67-6601 to 67-6604, 67-6607 to 67-6610, 67-6613, 67-6614, 67-6615, 67-6616 to 67-6618, 67-6620 to 67-6625, 67-6626, 67-6629 and 67-6630. Probably this reference should be to “this chapter,” being chapter 66, title 67, Idaho Code.

Chapter 67
IDAHO STATE COUNCIL ON DEVELOPMENTAL
DISABILITIES

Sec.

67-6701. Declaration of purpose.

67-6702. Definitions.

67-6703. Idaho state council on developmental disabilities.

67-6704. Composition.

67-6705. Appointment and term of office.

67-6706. Compensation and expenses.

67-6707. Organization of council — Employment of necessary personnel.

67-6708. Responsibilities and duties.

67-6709. Short title.

67-6710. [Amended and Redesignated.]

§ 67-6701. Declaration of purpose. — The legislature finds that disability is a natural part of the human experience that does not diminish the right of individuals with developmental disabilities to live independently, to exert control and choice over their own lives, and to fully participate in and contribute to their communities through full integration and inclusion in all aspects of their lives; that individuals with developmental disabilities comprise from 1.2 to 1.65 percent of the population; that individuals with developmental disabilities are at greater risk of discrimination and abuse, neglect, and exploitation; that individuals with developmental disabilities and their families often do not have access to appropriate services, support and other assistance to live independent lives in their homes and communities; that an increasing number of people with developmental disabilities are living at home with aging parents as primary caregivers; and that services and programs are located within diverse agencies and organizations with no central point for coordination and cooperation, comprehensive planning, evaluation, monitoring and advocating on behalf of people with developmental disabilities. This act is designed to assure that individuals with developmental disabilities and their families participate in the design of, and have access to, needed community services, individualized supports, and other forms of assistance that promote self-determination, independence, productivity, and integration and inclusion in all facets of community life through culturally appropriate programs. This act is also intended to assure the dignity of persons with developmental disabilities, by reaffirming their rights, which are the same rights as other people of the state of the same age and include the right to live as complete and normal lives as possible and to develop their abilities and potential to the fullest extent possible.

It is understood that the intention of this act is not to supersede the authority or responsibilities of agencies of state government responsible for providing services to persons with developmental disabilities.

History.

I.C., § 67-6701, as added by 1978, ch. 269, § 1, p. 618; am. 2002, ch. 113, § 1, p. 317.

STATUTORY NOTES

Compiler's Notes.

The term “this act” throughout this section refers to S.L. 1978, Chapter 269, which is compiled as §§ 67-6701 to 67-6709.

§ 67-6702. Definitions. — (1) “Advocacy” means to act in the interest of individuals with developmental disabilities in accordance with the purposes of this chapter.

(2) “Assistive technology device” is any item, equipment or product system that is used to increase, maintain or improve functional capabilities of individuals with disabilities.

(3) “Assistive technology service” is any service which directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device.

(4) “Council” means the Idaho state council on developmental disabilities.

(5) A “developmental disability” means a severe and chronic disability of an individual that: (a) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (b) Is manifested before the individual attains age twenty-two (22) years; (c) Is likely to continue indefinitely;

(d) Results in substantial functional limitations in three (3) or more of the following areas of major life activity: (i) Self-care;

(ii) Receptive and expressive language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction;

(vi) Capacity for independent living; or

(vii) Economic self-sufficiency; and

(e) Reflects the need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports or other forms of assistance which are: (i) Of lifelong or extended duration, and (ii) Individually planned and coordinated.

(6) “Inclusion” means the acceptance and encouragement of the presence and participation of individuals with developmental disabilities, by individuals without disabilities, in social, educational, work and community activities, that enables individuals with developmental disabilities to: (a) Have friendships and relationships with individuals and families of their own choice; (b) Live in homes close to community resources; (c) Enjoy full access to and active participation in the same community activities and types of employment as individuals without disabilities; (d) Take full advantage of their integration in a manner that allows them to live, learn, work and enjoy life in regular contact with individuals without disabilities; (e) Enjoy full and equal access to appropriate assistive technology devices and services and to information and electronic technology.

(7) “Individualized supports” means supports that: (a) Enable an individual with a developmental disability to exercise self-determination, be independent, be productive, and be integrated and included in all facets of community life; (b) Are designed to:

- (i) Enable such individual to control such individual’s environment, permitting the most independent life possible; (ii) Prevent placement into a more restrictive living arrangement than necessary; (iii) Enable such individual to live, learn[,] work, and enjoy life in the community;
- (c) Include:

- (i) Early intervention services;

- (ii) Respite care;

- (iii) Personal assistance services;

- (iv) Family support services;

- (v) Supported employment services;

- (vi) Support services for families headed by aging caregivers of individuals with developmental disabilities; (vii) Provision of assistive technology devices and services; and (viii) Transportation services.

(8) “Integration” means exercising the equal right of individuals with developmental disabilities to access and use the same community resources as are used by and available to other individuals.

(9) “Productivity” means:

(a) Engagement in income-producing work that is measured by increased income, improved employment status, or job advancement; or (b) Engagement in work that contributes to a household or community.

(10) “Self-determination” means that individuals with developmental disabilities have, with appropriate assistance: (a) The ability and opportunity to communicate and make personal decisions; (b) The ability and opportunity to communicate choices and exercise control over the type and intensity of services, supports and other assistance the individuals receive; (c) The authority to control resources to obtain needed services, supports and other assistance; (d) Opportunities to participate in and contribute to their communities; (e) Financial and other support necessary to: (i) Advocate for themselves and others;

(ii) Develop leadership skills, through training in self-advocacy; (iii) Participate in coalitions;

(iv) Educate policymakers; and

(v) Play a role in the development of public policies that affect individuals with developmental disabilities.

History.

I.C., § 67-6702, as added by 1978, ch. 269, § 1, p. 618; am. 2002, ch. 113, § 2, p. 317.

STATUTORY NOTES

Compiler’s Notes.

The bracketed comma in subsection (7)(b)(iii) was inserted by the compiler to correct the 2002 amendatory legislation.

§ 67-6703. Idaho state council on developmental disabilities. — (1) The Idaho state council on developmental disabilities is established to engage in advocacy, capacity building, and systemic change activities that:

(a) Contribute to a coordinated, consumer and family-centered, consumer and family-directed, comprehensive system that includes needed community services, individualized supports, and other forms of assistance that promote self-determination for individuals with developmental disabilities and their families; and

(b) Are consistent with the requirements of the developmental disabilities assistance and **bill of rights** act of 2000 (**P.L. 106-402**) and subsequent acts.

(2) For budgetary purposes and for administrative support purposes, the council shall be assigned, by the governor, to a department or office within the state government. However, this assignment shall not interfere with the advocacy, capacity building, and systemic change activities, budget, personnel, plan development or plan implementation of the council, except that the designated state agency shall have the authority necessary to carry out the responsibilities described in **P.L. 106-402**, section 125(d)(3).

History.

I.C., § 67-6703, as added by 1978, ch. 269, § 1, p. 618; am. 2002, ch. 113, § 3, p. 317.

STATUTORY NOTES

Federal References.

The federal developmental disabilities assistance and **bill of rights** act of 2000, referred to in this section, is Act Oct. 30, 2000, **P.L. 106-402**, which is codified in U.S.C.S. throughout Titles 20, 29, and, primarily, 42.

P.L. 106-402, section 125(d)(3), referred to at the end of subsection (2), is codified as **42 U.S.C.S. § 15025(d)(3)**.

Compiler's Notes.

The reference enclosed in parentheses so appeared in the law as enacted.

§ 67-6704. Composition. — (1) The council shall consist of twenty-three (23) members to be appointed by the governor, at least sixty percent (60%) of whom shall be individuals with developmental disabilities, parents or guardians of children with developmental disabilities, or immediate relatives or guardians of adults with mentally impairing developmental disabilities who cannot advocate for themselves. These members shall not represent any other category of membership.

(2) At least five (5) of the members shall be persons with a developmental disability, and at least seven (7) of the members shall be parents or guardians of children with a developmental disability. One (1) additional member shall be either a person with a developmental disability or the parent of a child with a developmental disability. These members shall not be employees of a state agency that receives funds or provides services under [P.L. 106-402](#) or managing employees of any other entity that receives funds or provides services under [P.L. 106-402](#). For purposes of this subsection, “managing employee” shall have the same meaning as in [42 U.S.C. 1320a-5\(b\)](#).

(3) The principal state agencies concerned with services or programs affecting individuals with developmental disabilities shall be represented as members of the council, including entities responsible for administering funds under:

- (a) The rehabilitation act of 1973 ([29 U.S.C. 701 et seq.](#));
 - (b) The individuals with disabilities education act ([20 U.S.C. 1400 et seq.](#));
 - (c) The older Americans act of 1965 ([42 U.S.C. 3001 et seq.](#));
 - (d) Titles V and XIX of the social security act ([42 U.S.C. 701 et seq.](#) and [42 U.S.C. 1396 et seq.](#)).
- (4) The council shall also have representation from:
- (a) The state protection and advocacy organization;
 - (b) The university center for excellence in developmental disabilities education, research and service.

One (1) representative may represent more than one (1) program or service.

(5) The remainder of the members shall be representatives of local and nongovernmental agencies and private nonprofit groups concerned with services for individuals with developmental disabilities pursuant to [P.L. 106-402](#) and council bylaws required by [section 67-6707\(2\), Idaho Code](#).

(6) The membership of the council shall be geographically representative of the state and reflect the diversity of the state with respect to race and ethnicity.

History.

[I.C., § 67-6704](#), as added by 1978, ch. 269, § 1, p. 618; am. 1986, ch. 28, § 1, p. 81; am. 2002, ch. 113, § 4, p. 317; am. 2016, ch. 42, § 1, p. 92.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 42, rewrote subsection (2), which former read: “At least five (5) of the members shall be persons with a developmental disability, and at least seven (7) of the members shall be parents or guardians of such persons, and who are not officers or employees of an entity or state agency which receives funds for, or provides services to, developmentally disabled persons. One (1) additional member shall be either a person with a developmental disability or the parent of a person with a developmental disability”.

Federal References.

[P.L. 106-402](#), referred to in this section, is the federal developmental disabilities assistance and [bill of rights](#) act of 2000, codified in U.S.C.S. throughout Titles 20, 29, and, primarily, 42.

Compiler’s Notes.

The references enclosed in parentheses so appeared in the law as enacted.

§ 67-6705. Appointment and term of office. — (1) Council members' terms shall be for three (3) years.

(2) The governor shall make appropriate provisions for rotation of membership on the council.

(3) A vacancy occurring in the membership of the council shall be filled by appointment of the governor for the unexpired portion of the vacated term.

(4) Members may be replaced because of poor attendance, lack of participation in the council's work, or malfeasance in office.

History.

I.C., § 67-6705, as added by 1978, ch. 269, § 1, p. 618; am. 2002, ch. 113, § 5, p. 317.

§ 67-6706. Compensation and expenses. — Members of the council shall serve with no salary or benefits, but are entitled to reimbursement for travel and other expenses as authorized by the Idaho Code. Those members of the council, as set out in section 67-6704(2), Idaho Code, shall also be reimbursed for expenses associated with the respective members' respite care for their child or adult family member with developmental disabilities when necessary for the members to participate in authorized council activities and meetings required under section 67-6707(2), Idaho Code.

History.

I.C., § 67-6706, as added by 1978, ch. 269, § 1, p. 618; am. 1986, ch. 28, § 2, p. 81; am. 2002, ch. 113, § 6, p. 317.

STATUTORY NOTES

Cross References.

Regulation of per diem travelling expenses, § 67-2004.

§ 67-6707. Organization of council — Employment of necessary personnel. — (1) The governor shall, after consultation with the council members, appoint a chair from among the council membership who shall serve for a one (1) year term, but at the pleasure of the governor.

(2) The council shall adopt and amend bylaws governing its proceedings, activities and organization, including, but not limited to, provisions for election of officers other than the chair; provision for a quorum, procedure, frequency and location of meetings; and establishment, functions and membership of council committees.

(3) The council shall employ and fix the compensation, subject to provisions of chapter 53, title 67, Idaho Code, of such personnel as may be necessary, including, but not limited to, a full-time administrator, who shall be designated as the executive director of the council and who shall be exempt under the provisions of chapter 53, title 67, Idaho Code.

History.

I.C., § 67-6707, as added by 1978, ch. 269, § 1, p. 618; am. 2002, ch. 113, § 7, p. 317.

§ 67-6708. Responsibilities and duties. — The council shall:

(1) Serve as a forum by which issues and benefits regarding current and potential services and programs for persons with developmental disabilities may be discussed by consumer, public, private, professional and lay interests.

(2) Advocate for individuals with developmental disabilities and conduct or support programs, projects and activities that carry out such advocacy.

(3) Advise the executive and legislative branches of local, state and federal governments and the private sector on programs and policies pertaining to current and potential services to persons with developmental disabilities and their families.

(4) Submit periodic reports to the governor, the legislature and departments of state government on how current federal and state programs, rules, regulations, and legislation affect services to persons with developmental disabilities.

(5) Assess, review and/or monitor the services and programs being provided for individuals with developmental disabilities.

(6) Review and comment on all service plans and budgets of the state which will or may affect services and programs for persons with developmental disabilities.

(7) Review and comment on proposed state legislation and/or rules and regulations relating to services and programs for persons with developmental disabilities.

(8) Participate in community integration for individuals with developmental disabilities.

(9) In consultation with the designated state agency develop and adopt, and annually review and revise as necessary, a five (5) year strategic state plan. Such state plan shall be the state plan required to be submitted under [P.L. 106-402](#), as amended, and shall describe how the council will conduct and support advocacy, capacity building and systemic change through:

- (a) Outreach and identification of individuals with developmental disabilities and their families to assist and enable them to obtain services, supports and assistance;
- (b) Training for individuals with developmental disabilities, their families and personnel to enable them to obtain access to the services and supports they need;
- (c) Technical assistance to assist public and private entities to assist and support individuals with developmental disabilities in achieving independence, integration, productivity and self-determination;
- (d) Support for and education of communities to respond positively to individuals with developmental disabilities and their families;
- (e) Interagency collaboration and coordination;
- (f) Coordination with related councils, commissions and programs concerning individuals with disabilities;
- (g) Efforts to eliminate barriers to the access and use of community services by individuals with developmental disabilities, to enhance system design and redesign, and to enhance citizen participation;
- (h) Public education activities regarding the capabilities, preferences and needs of individuals with developmental disabilities through coalition development, self-advocacy training and education of policymakers;
- (i) Conducting studies, analyses, information gathering, and providing recommendations to local, state and federal policymakers in order to increase their ability to offer opportunities or enhance services to individuals with developmental disabilities;
- (j) Demonstration of new approaches to services and supports for individuals with developmental disabilities and their families to assist them in achieving independence, integration, productivity and self-determination;
- (k) Demonstration of new approaches to increase access to electronic and information technologies for individuals with significant disabilities; and
- (l) Other advocacy, capacity building and systemic change activities to promote a coordinated, consumer and family directed comprehensive

system of supports and services for individuals with developmental disabilities.

History.

I.C., § 67-6708, as added by 1978, ch. 269, § 1, p. 618; am. 2002, ch. 113, § 8, p. 317.

STATUTORY NOTES

Federal References.

Public Law 106-402, referred to in the introductory paragraph in subdivision (9), is the federal developmental disabilities assistance and bill of rights act of 2000, which is codified in U.S.C.S. Titles 20, 29, and, primarily, 42.

§ 67-6709. Short title. — This act shall be known and cited as the “Idaho state council on developmental disabilities act.”

History.

I.C., § 67-6710, as added by 1978, ch. 269, § 1, p. 618; am. and redesign. 2002, ch. 113, § 10, p. 317.

STATUTORY NOTES

Prior Laws.

Former § 67-6709, which comprised **I.C., § 67-6709**, as added by 1978, ch. 269, § 1, p. 618, was repealed by S.L. 2002, ch. 113, § 9.

Compiler’s Notes.

This section was formerly compiled as § 67-6710.

The term “this act” refers to S.L. 1978, Chapter 269, which is compiled as §§ 67-6701 to 67-6709.

§ 67-6710. [Amended and Redesignated.]

STATUTORY NOTES

Compiler's Notes.

This section has been amended and redesignated as § 67-6709 pursuant to S.L. 2002, ch. 113, § 10.

Chapter 68

ECONOMIC ESTIMATES

Sec.

67-6801. Economic estimates commission created.

67-6802. Duties of commission.

67-6803. Expenditure limits.

§ 67-6801. Economic estimates commission created. — There is hereby established an economic estimates commission, the membership of which shall be the same as that of the state tax commission.

History.

1980, ch. 380, § 1, p. 966.

STATUTORY NOTES

Cross References.

State tax commission, § 63-101.

§ 67-6802. Duties of commission. — The economic estimates commission shall determine and publish prior to January 1 of each year the estimated total personal income for the following fiscal year for the state of Idaho, which estimate shall be in conformance with definitions used by the bureau of economic analysis, U.S. department of commerce, and shall be used in computing the appropriations limit for the legislature.

History.

1980, ch. 380, § 2, p. 966.

STATUTORY NOTES

Compiler's Notes.

For further information on the bureau of economic analysis, see *<http://bea.gov/>*.

§ 67-6803. Expenditure limits. — (a) The legislature shall not, by ongoing appropriation for any fiscal year, cause the expenditure of general fund revenues for that fiscal year to exceed five and one-third percent (5 1/3%) of the total personal income of the state for the ensuing fiscal year as determined by the economic estimates commission. One-time general fund appropriations are not to be included in the expenditure limit.

(b) In order to permit the transference of governmental functions between the federal and state governments and between the state government and its political subdivisions and school districts, without abridging the purpose of this act, adjustments to the appropriation percentage limitation of total personal income shall be specifically detailed in appropriations and shall be consistent with the following principles:

(1) If, by order of any court or by legislative enactment on or after January 1, 1980, the costs of a program or any portion thereof are transferred from a political subdivision of this state or school district to the state, the appropriation percentage limitation may be commensurately increased provided the tax revenues of the affected political subdivisions or school districts are commensurately decreased.

(2) If, by order of any court or by legislative enactment on or after January 1, 1980, the costs of a program or any portion thereof are transferred from the state to a political subdivision of this state, the appropriation percentage limitation shall be commensurately decreased, and the tax rates of the political subdivision may be commensurately increased.

(3) If funds provided by the federal government in support of an existing service or program are eliminated or significantly curtailed on or after January 1, 1980, the appropriation percentage limitation may be commensurately increased by the amount of the increased state costs incurred in providing such service or program or any portion thereof pursuant to an order of any court or by legislative enactment.

(4) If the costs of a program are transferred from the state to the federal government on or after January 1, 1980, the appropriation percentage

limitation shall be commensurately decreased.

History.

1980, ch. 380, § 3, p. 966; am. 1994, ch. 338, § 1, p. 1074.

STATUTORY NOTES

Compiler's Notes.

The term “this act” in the introductory paragraph in subsection (b) refers to S.L. 1980, Chapter 380, which is compiled as §§ 67-6801 to 67-6803.

Chapter 69

FOOD SERVICE FACILITIES

Sec.

67-6901. Statement of public policy.

67-6902. Definitions.

67-6903. Food service facilities in public buildings.

67-6904. Other food service.

67-6905. Transition.

§ 67-6901. Statement of public policy. — It is the policy of this state to encourage and enable people with disabilities to participate fully in the social and economic life of the state and to engage in remunerative employment.

History.

I.C., § 67-6901, as added by 1982, ch. 350, § 1, p. 866; am. 2010, ch. 235, § 64, p. 542.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 235, substituted “people with disabilities” for “the physically and mentally handicapped.”

§ 67-6902. Definitions. — As used in this chapter:

(1) “Disabled” or “person with disability” means:

(a) A person who has a physical or mental impairment which substantially limits one (1) or more major life activities (e.g., communication, ambulation, self-care, socialization, education, vocational training, transportation or employment);

(b) A person who has a record of such an impairment and the impairment is expected to continue indefinitely;

(c) A person who is regarded or treated by others as having such an impairment;

(d) Persons including, but not limited to, persons who are blind, deaf or who have epilepsy, autism, intellectual disabilities or mental illness or who have orthopedic disorders or cerebral palsy.

(2) “Food service facilities” includes restaurants, cafeterias, snack bars, and goods and services customarily offered in connection with any of the foregoing, and also includes vending machines dispensing foods when operated independently or in conjunction with such facilities.

(3) “Nonprofit organization representing persons with disabilities” means tax exempt organizations as defined under [section 501\(c\)\(3\) of the Internal Revenue Code](#) and includes the Idaho commission for the blind and visually impaired.

(4) “Public buildings” means all county courthouses, and all city halls and buildings used primarily as governmental offices of the state or any county or city. It does not include public schools or buildings or institutions of higher education or professional-technical training, buildings of the department of health and welfare, facilities of the state board of correction or the state capitol building.

History.

[I.C., § 67-6902](#), as added by 1982, ch. 350, § 1, p. 866; am. 1994, ch. 159, § 8, p. 359; am. 1999, ch. 329, § 40, p. 852; am. 2009, ch. 283, § 1, p.

851; am. 2010, ch. 235, § 65, p. 542.

STATUTORY NOTES

Cross References.

Commission for the blind and visually impaired, § 67-5401 et seq.

Amendments.

The 2009 amendment, by ch. 283, in subsection (1), deleted “the state capitol” following “means” and added “or the state capitol building” at the end.

The 2010 amendment, by ch. 235, alphabetized the defined terms, substituting “‘Disabled’ or ‘person with disability’ means” in subsection (1) and “persons with disabilities” for “the handicapped” in subsection (3).

Federal References.

Section 501(c)(3) of the internal revenue code, referred to in subdivision (3), is compiled as [26 U.S.C.S. § 501\(c\)\(3\)](#).

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-6903. Food service facilities in public buildings. — Any governmental agency which proposes to allow, to operate or to continue a food service facility in a public building shall first attempt, in good faith, to notify nonprofit organizations representing persons with disabilities of the opportunity to operate a food service. If more than one (1) organization responds, the governmental agency shall establish reasonable criteria and shall select on the basis of that criteria from the proposals submitted. Criteria adopted by a governmental agency pursuant to this section, and used as a basis for selection among proposals submitted, shall include the requirement that proposals submitted by the Idaho commission for the blind and visually impaired shall have priority over all other proposals submitted. Proposals submitted by nonprofit organizations representing persons with disabilities, other than the Idaho commission for the blind and visually impaired, shall receive priority over all other proposals except proposals submitted by the Idaho commission for the blind and visually impaired. A food service facility shall be operated without payment of rent. The governmental agency shall not offer or grant any other party a contract or concession to operate such food service facility unless the governmental agency determines in good faith that no nonprofit organization representing persons with disabilities is willing or able to provide satisfactory food service.

History.

I.C., § 67-6903, as added by 1982, ch. 350, § 1, p. 866; am. 1994, ch. 159, § 9, p. 359; am. 2010, ch. 235, § 66, p. 542.

STATUTORY NOTES

Cross References.

Commission for the blind and visually impaired, § 67-5401 et seq.

Amendments.

The 2010 amendment, by ch. 235, in the first and last sentence, substituted “representing persons with disabilities” for “representing

handicapped persons”; and in the fourth sentence, substituted “persons with disabilities” for “the handicapped.”

§ 67-6904. Other food service. — Buildings or institutions of the department of health and welfare, not defined as public buildings for purposes of this chapter, shall nevertheless be subject to the provisions of section 67-6903, Idaho Code, for the purposes of providing services of vending machines dispensing food.

History.

I.C., § 67-6904, as added by 1982, ch. 350, § 1, p. 866.

STATUTORY NOTES

Cross References.

Department of health and welfare, § 56-1001 et seq.

§ 67-6905. Transition. — The provisions of this chapter shall not impair any valid contract to provide food service facilities existing as of March 1, 1982, and shall not preclude renewal, at the option of the commission, of such a contract for the same services.

History.

I.C., § 67-6905, as added by 1982, ch. 350, § 1, p. 866.

STATUTORY NOTES

Cross References.

Commission for the blind and visually impaired, § 67-5401 et seq.

Chapter 70

IDAHO SAFE BOATING ACT

Sec.

67-7001. Purpose.

67-7002. Jurisdiction and authority.

67-7003. Definitions.

67-7004. Hull identification number.

67-7005. Capacity plate and certification.

67-7006. Capacity plate — Contents.

67-7007. Certification label — Contents.

67-7008. Certificate of number — Expiration — Fees.

67-7008A. Additional fees — Deposit into invasive species fund.

67-7009. Exemption from numbering provisions.

67-7010. Unnumbered vessels.

67-7011. Use permit — Expiration — Fees — Collection exemption.
[Repealed.]

67-7012. Advisory committee.

67-7013. Remittance of fees.

67-7014. Administrative fees for vessels.

67-7015. Safety equipment — Additional regulations.

67-7016. Grossly negligent operation.

67-7017. Negligent operation.

67-7018. Unlicensed commercial vessels.

67-7019. Speed.

67-7020. Incapacity of operator.

67-7021. Divers' warning.

67-7022. Overloading.

67-7023. Overpowering.

67-7024. Water skiing.

67-7025. Interference with navigation.

67-7026. Restricted areas.

67-7027. Collisions, accidents and casualties — Reports.

67-7028. Enforcement.

67-7029. Agents of the department.

67-7030. Regattas, races, marine events, tournaments and exhibitions.

67-7031. Marking of water areas — Procedures — Local rules.

67-7032. Owner's responsibility — Presumption of consent.

67-7033. Penalties.

67-7034. Persons under the influence of alcohol, drugs or any other intoxicating substances.

67-7035. Aggravated operating while under the influence of alcohol, drugs or any other intoxicating substances.

67-7036. Testing blood of persons killed in vessel accidents.

67-7037. Test of operator for alcohol concentration, presence of drugs or other intoxicating substances.

67-7038. Mufflers and noise restrictions.

67-7039. Vessel Titling Act.

67-7040. Application to certain vessels.

67-7041. Liens and encumbrances — Filing — Notation on certificate — Constructive notice.

67-7042 — 67-7049. [Reserved.]

67-7050. Reciprocal agreements.

67-7051 — 67-7076. [Reserved.]

67-7077. Operation of vessels.

67-7078. Personal watercraft liveries.

§ 67-7001. Purpose. — It is hereby declared to be the policy of the state of Idaho to improve boating safety, to foster the greater development, use and enjoyment of the waters of this state by watercraft and to adopt certain standards for the safe operation and equipment of vessels. This chapter may be known and shall be cited as the “Idaho Safe Boating Act.”

History.

I.C., § 67-7001, as added by 1986, ch. 207, § 2, p. 515.

CASE NOTES

Cited *State v. Simpson*, 112 Idaho 644, 734 P.2d 669 (Ct. App. 1987).

RESEARCH REFERENCES

Idaho Law Review. — Freedom to Float: Requiring Reasonable Suspicion for Boating Stops on Idaho Waterways, Comment. 52 Idaho L. Rev. 547 (2016).

§ 67-7002. Jurisdiction and authority. — This chapter shall apply to all vessels operated on the waters of and over which the state of Idaho shall have jurisdiction. The department is hereby granted authority to carry out the administration of the provisions of this chapter, and to promulgate rules and regulations in compliance with chapter 52, title 67, Idaho Code, to effectuate that purpose.

History.

I.C., § 67-7002, as added by 1986, ch. 207, § 2, p. 515.

RESEARCH REFERENCES

Idaho Law Review. — Freedom to Float: Requiring Reasonable Suspicion for Boating Stops on Idaho Waterways, Comment. 52 Idaho L. Rev. 547 (2016).

§ 67-7003. Definitions. — In this chapter:

(1) “Actual physical control” means being in the operator’s position of the vessel with the motor running or with the vessel moving.

(2) “Aids to navigation” means such buoys, batons, markers or other fixed objects in the water which are established and used to mark obstructions or to direct navigation through separate channels.

(3) “Authorized vendor” means a retail/commercial enterprise or government office authorized by the department to sell certificates of number as provided in [section 67-7008, Idaho Code](#).

(4) “Boating law administrator” means the staff person of the Idaho department of parks and recreation appointed by the director and who supervises the boating program.

(5) “Commercial vessel” means any vessel used in the carriage of any person, persons or property for a valuable consideration, whether directly or indirectly flowing to the owner, partner, agent or any other person interested in the vessel.

(6) “Department” means the Idaho department of parks and recreation.

(7) “Director” means the director of the Idaho department of parks and recreation.

(8) “Float house” means a floating structure which is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling, has no mode of power of its own, is dependent for utilities upon a continuous utility linkage to a source originating on shore, and has a permanent continuous connection to a sewage system on shore.

(9) “Float tube” means any vessel constructed of canvas, nylon or other material encasing an inflatable inner tube which allows the operator to sit inside with his legs dangling below the vessel.

(10) “Length of vessel” means the distance measured at the centerline at the highest point above the waterline from the fore-part of the outer hull at

the bow to the aft-part of the outer hull at the stern, excepting any bowsprits, railings or extraneous or additional equipment.

(11) “Manufacturer” means any person who is engaged in the business of manufacturing or importing new and unused vessels for the purpose of sale or trade.

(12) “Operate” means to navigate or otherwise use a vessel on the water of this state.

(13) “Operator” means any person who controls the direction or propulsion of any vessel on the water of this state.

(14) “Owner” means any person having a property interest in or entitled to the use or possession of a vessel, including a person entitled to use or possession subject to the interest in another person reserved or created by agreement and securing payment of performance of an obligation, but not including a lessee under lease not intended as security.

(15) “Passenger” means every person carried aboard a vessel other than:

(a) The owner or his representative;

(b) The operator;

(c) A bona fide member of the crew engaged in the business of the vessel who has contributed no consideration for carriage and who is paid for his services; or

(d) Any guest on board a vessel which is used exclusively for pleasure purposes who has not contributed any consideration directly or indirectly for his carriage.

(16) “Person” means any individual, firm, partnership, corporation, company, association, joint stock association, or body politic, except the United States and the state of Idaho, and includes any agent, trustee, executor, reserve assignee or similar representative of any of the above.

(17) “Personal watercraft” means a small vessel which uses an outboard motor or an inboard motor powering a water jet pump as its primary source of power and is designed to be operated by a person sitting, standing or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

(18) “Private label merchandiser” means any person engaged in the business of selling or distributing, under his own trade name, vessels manufactured by another.

(19) “Regatta,” “Race,” “Marine Event,” “Tournament,” or “Exhibition” means an organized water event of limited duration which is conducted according to a prearranged schedule.

(20) “Regulatory markers” means any fixed or anchored aid to navigation which is established and used, but is not limited to, the bathing beach markers, speed zone markers, information markers, swimming or diving markers, floating mooring buoys, fishing buoys or markers for ski courses or jumps.

(21) “Rules of the road” means the statutory and regulatory rules governing the navigation of vessels as published by the United States Coast Guard in Navigational Rules International — Inland.

(22) “Vessel” means every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but does not include float houses, diver’s aids operated and designed primarily to propel a diver below the surface of the water, and nonmotorized devices not designed or modified to be used as a means of transportation on the water, such as inflatable air mattresses, single inner tubes, and beach and water toys.

(23) “Water of this state” means any waters in the state of Idaho over which the state has jurisdiction.

History.

I.C., § 67-7003, as added by 1986, ch. 207, § 2, p. 515; am. 1988, ch. 368, § 1, p. 1084; am. 1994, ch. 65, § 2, p. 128; am. 1996, ch. 54, § 1, p. 160; am. 1996, ch. 335, § 2, p. 1132; am. 1997, ch. 101, § 1, p. 232; am. 1997, ch. 216, § 1, p. 636; am. 2014, ch. 338, § 16, p. 838.

STATUTORY NOTES

Cross References.

Department of parks and recreation, § 67-4218.

Amendments.

This section was amended by two 1997 acts — ch. 101, § 1 and ch. 216, § 1, both effective July 1, 1997 — which appear to be compatible and have been compiled together. Both ch. 101, § 1 and ch. 216, § 1 amended the section by adding an identical subsection (4) and renumbered former subsections (5) to (22) as present subsections (6) to (23).

The 2014 amendment, by ch. 338, substituted “certificate of number” for “certificate of registration” in subsection (3).

Legislative Intent.

Section 1 of S.L. 1996, ch. 335, read: “Legislative Intent. The legislature hereby finds that the regulation of personal watercraft as a separate and distinct type of vessel is necessary to protect the health, safety and general welfare of its citizenry.”

Compiler’s Notes.

For further information on the Coast Guard Navigation Rules International — Inland, referred to in subsection (21), see <https://www.hsdl.org/?abstract&did=22296>.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. [118 A.L.R.5th 347](#).

§ 67-7004. Hull identification number. — (1) All vessels, except seaplanes, shall have two (2) identical hull identification numbers permanently displayed and affixed in accordance with federal regulations.

(2) A person who builds or imports a vessel for his own use and not for the purposes of sale shall request a hull identification number from the director and affix the number as instructed.

(3) No person shall destroy, remove, alter, or cover a vessel hull identification number.

(4) The director may issue a hull identification number for any vessel in violation of the provisions of this section.

History.

I.C., § 67-7004, as added by 1986, ch. 207, § 2, p. 515; am. 1996, ch. 54, § 2, p. 160.

§ 67-7005. Capacity plate and certification. — All vessels, except seaplanes, constructed after November 1, 1972, and manufactured in or used on the waters of this state and under twenty (20) feet in length, except sailboats, canoes, kayaks and inflatable boats, shall have a certification and capacity plate permanently affixed to the vessel at a location so as to be clearly visible and legible from the position designed or normally intended to be occupied by the operator of the vessel when it is underway in the water.

History.

I.C., § 67-7005, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7006. Capacity plate — Contents. — A capacity plate shall bear the following information permanently marked thereon:

(1) For all vessels designed for or represented by the manufacturer as being suitable for use with outboard motor: (a) The total weight of person, motor, gear, and other articles placed aboard which the vessel is safely capable of carrying under normal conditions.

(b) The recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each person. In no instance shall such presumed weight per person be less than one hundred fifty (150) pounds.

(c) Clear notice that the information appearing on the capacity plate is applicable under normal conditions and that the weight of the outboard motor and associated equipment is considered to be part of total weight capacity.

(d) The maximum horsepower of the motor the vessel is designed or intended to accommodate.

(2) For all other vessels to which this chapter applies:

(a) The total weight of persons, gear and other articles placed aboard which the vessel is safely capable of carrying under normal conditions.

(b) The recommended number of persons commensurate with the weight capacity of the vessel and the presumed weight in pounds of each such person. In no instance shall such presumed weight per person be less than one hundred fifty (150) pounds.

(c) Clear notice that the information appearing on the capacity plate is applicable under normal conditions.

History.

I.C., § 67-7006, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7007. Certification label — Contents. — The certification label shall contain the following information in letters no less than one-eighth (1/8) inch in height and the information letters shall contrast with the basic color of the label and identify:

(1) The name and address (city and state) of the manufacturer. If the vessel is manufactured outside the United States, the importer shall be considered the statutory manufacturer, and his name and U.S. address shall appear on the label; or, if the vessel is to be sold at retail by a private label merchandiser, then his name and address may appear on the label.

(2) A statement that:

(a) “This Boat (or Vessel) Complies With U.S. Coast Guard Safety Standards in Effect on (month and year of certification)” or;

(b) “This Boat (or Vessel) Complies With U.S. Coast Guard Safety Standards in Effect on the Date of Certification” and;

(c) If the vessel displays a stability warning label as required by federal law the certification label shall also show the words, “This Boat Complies With U.S. Coast Guard Safety Standards, Except Load Capacity, in Effect on the Date of Certification” (or the actual date of such certification).

(3) The display of the certification and the capacity information required by this chapter may be combined on one (1) label provided the two (2) information displays are separated by a prominent line or border and the capacity information is the most prominent by virtue of larger type face, bolder type face or contrasting color background.

(4) The information relating to capacity required by this chapter shall be determined by any of the methods and formulas used, recommended or recognized by the U.S. Coast Guard or any agencies successor thereto.

History.

I.C., § 67-7007, as added by 1986, ch. 207, § 2, p. 515.

STATUTORY NOTES

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-7008. Certificate of number — Expiration — Fees. — (1) Within fifteen (15) days after purchase, or as otherwise herein provided, the owner of each vessel requiring numbering by the state of Idaho shall file an application for certificate of number with an assessor or authorized vendor on forms provided by the department. The application shall be signed by the owner and shall be accompanied by the fee herein designated. Upon receipt of an application in approved form, and the appropriate fee, the assessor or authorized vendor shall enter the same upon the records of its office and issue to the applicant two (2) validation stickers and a certificate of number, the receipt of any fee paid and the name and address of the owner, and the assessor or authorized vendor shall forward to the department a duplicate copy. The owner shall also receive a vessel number that shall be permanently assigned to the boat. The owner shall paint on or permanently attach to each side of the bow of the vessel the vessel number and validation sticker in a manner as may be prescribed by rules of the department in order that they may be completely visible, and the number shall be maintained in legible condition. The certificate of number shall be pocket-size and shall be on board and available at all times for inspection on the vessel for which issued whenever that vessel is in operation, except that livery operators may have the rental agreement on board rented vessels in lieu of the certificate of number.

(2) The owner of any vessel for which a current certificate of number has been issued pursuant to any federal law or a federally approved numbering system of another state shall, if the vessel is operated on the waters of this state in excess of sixty (60) days, make application for an Idaho certificate of number in the manner prescribed in this section.

(3) Each assessor and authorized vendor shall record, on a form provided by the department, the names of all owners of vessels who make application for certificates of number, together with the amount of the fees paid by the owners. He shall, on or before the tenth of each month, forward to the department a duplicate copy of each record for the preceding month.

(4) All records of the department made or kept pursuant to this section shall be kept current and shall be public records.

(5) Every certificate of number issued shall continue in full force and effect through December 31 of the year of issue unless sooner terminated or discontinued in accordance with law. Certificates of number may be renewed by the owner in the same manner provided for in the initial securing of them.

(6) The owner of any vessel shall notify the department within fifteen (15) days if his vessel is destroyed or abandoned, or is sold or transferred either wholly or in part to another person or persons or if the owner's address no longer conforms to the address appearing on the certificate of number. In all such cases, the notice shall be accompanied by a surrender of the certificate of number. When the surrender of the certificate is by reason of the vessel being destroyed, abandoned or sold, the department shall cancel the certificate and enter that fact in its records. If the surrender is by reason of a change of address on the part of the owner, the new address shall be endorsed on the certificate and the certificate returned to the owner.

(7) Whenever the ownership of a vessel changes, the purchaser shall, within fifteen (15) days after acquisition, make application to the department for transfer to him of the certificate of number issued for the vessel, giving his name, address, and the vessel number and shall, at the same time, pay to the department a transfer fee of three dollars (\$3.00). Upon receipt of the application and fee, the department shall transfer the certificate of number issued for the vessel to the new owner or owners. Unless the application is made and the fee paid within fifteen (15) days, the vessel shall be considered to be without a certificate of number.

(8) No numbers other than the validation stickers and vessel number issued to a vessel or granted by reciprocity pursuant to law shall be painted, attached, or otherwise displayed on either side of the bow of the vessel.

(9) If any certificate of number becomes lost, mutilated, or becomes illegible, the owner of the vessel for which the same was issued shall obtain a duplicate of the certificate from the department upon application and the payment of a fee of three dollars (\$3.00). If one or both validation stickers are lost, stolen, or destroyed, any sticker remnants and the certificate of number should be returned to the department along with a three dollar (\$3.00) fee and an application for a duplicate certificate of number and validation stickers.

(10) A person engaged in the manufacture or sale of vessels of a type otherwise required to be numbered by law, may obtain pursuant to regulations duly promulgated by the department, certificates of number for use in the testing or demonstration only of a vessel upon payment of thirteen dollars (\$13.00) for each certificate. Certificates of number so issued may be used by the applicant in the testing or demonstration only of vessels by temporary placement of the numbers assigned by the certificates on the vessel tested or demonstrated, and shall be issued and displayed as otherwise prescribed by this chapter or by regulation of the department.

(11) The fees shall be:

Vessels 0-12 feet in length \$20.00

Vessels over 12 feet in length 20.00

plus \$2.00 per foot for each additional foot in excess of 12 feet.

(12) The provisions of subsection (11) of this section, with respect to the amount of payment of fees shall not apply to vessels owned by any charitable or religious organization, scout organization or any similar organization not used and operated for profit. All vessels currently numbered by the state of Idaho and having paid the fees imposed by subsection (11) of this section shall not be assessed and taxed as personal property in the state of Idaho.

(13) The fee for vessels owned by any charitable or religious organization, scout organization or similar organization not used and operated for profit shall be two dollars (\$2.00) per year.

History.

I.C., § 67-7008, as added by 1986, ch. 207, § 2, p. 515; am. 1994, ch. 65, § 3, p. 128; am. 2007, ch. 240, § 1, p. 710; am. 2014, ch. 338, § 2, p. 838.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 240, increased the fee amounts in subsection (11)(a) from \$13.00 to \$20.00.

The 2014 amendment, by ch. 338, substituted “certificate of number” for “certificate of registration” in the section heading and throughout the section; inserted the fourth sentence in subsection (1); substituted “the validation stickers and vessel number” for “the registration number” in subsection (8); and, in subsection (11), deleted the paragraph (a) designation and deleted former paragraphs (b) and (c), relating to certain registration fees.

Compiler’s Notes.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

CASE NOTES

Distinguished from Motor Vehicle Certificate.

Boat registration required under this chapter is purely administrative and, unlike the motor vehicle certificate of title, is not a certificate of ownership and does not provide for the noting of any liens on the registration. *In re Aguiar*, 116 Bankr. 223 (Bankr. D. Idaho 1990).

§ 67-7008A. Additional fees — Deposit into invasive species fund. —

(1) In addition to any other moneys or fees collected pursuant to the provisions of section 67-7008, Idaho Code, or any other provision of chapter 70, title 67, Idaho Code, all vessels shall pay an additional fee each calendar year as follows:

(a) Motorized vessels and sailboats:

(i) Ten dollars (\$10.00) per vessel numbered in the state of Idaho prior to launch into the public waters of the state;

(ii) Thirty dollars (\$30.00) per vessel documented through the United States coast guard or registered or numbered outside the state of Idaho prior to launch into the public waters of the state.

(b) Nonmotorized vessels: Seven dollars (\$7.00) per vessel prior to launch into the public waters of the state.

(c) Licensed outfitters, as defined in [section 36-2102\(b\), Idaho Code](#), with nonmotorized fleets exceeding five (5) vessels shall be afforded a prorated group rate of thirty-two dollars (\$32.00) for six (6) to ten (10) vessels; fifty-seven dollars (\$57.00) for eleven (11) to twenty (20) vessels; and one hundred two dollars (\$102) for twenty-one (21) or more vessels up to a maximum of one hundred (100) vessels. The fee for any additional vessels shall be one dollar (\$1.00) per vessel. The licensed outfitter group rates shall also be available for groups exempt from licensing pursuant to [section 36-2103, Idaho Code](#).

(2) Upon payment of the fee as provided in this section, the payor shall be issued a protection against invasive species sticker that shall be displayed on the vessel in a manner as prescribed by the rules of the department. Stickers shall be considered in full force and effect through December 31 of the year of issue.

(3) Fees shall be collected by the department or authorized vendor.

(a) Vendors may retain one dollar and fifty cents (\$1.50) of fees collected pursuant to this section except those collected pursuant to subsection (1) (a)(i) of this section.

(b) The department shall retain up to twenty percent (20%) of the fees for the actual costs of administering the sticker program.

(c) All remaining fees collected pursuant to this section shall be deposited in the invasive species fund established in [section 22-1911, Idaho Code](#).

(d) For the purpose of this section, “vessel” is defined in [section 67-7003\(22\), Idaho Code](#). All vessels are subject to the provisions of this section, with the exception of small rafts and other inflatable vessels less than ten (10) feet in length.

(4) If the protection against invasive species sticker is lost, stolen or destroyed, any sticker remnants shall be returned to the department along with a three dollar (\$3.00) fee for a duplicate sticker.

(5) A person engaged in the manufacture or sale of vessels may obtain a sticker to be used in the testing or demonstration only of vessels by temporary placement of the protection against invasive species sticker on the vessel tested or demonstrated.

History.

[I.C., § 67-7008A](#), as added by 2009, ch. 137, § 1, p. 419; am. 2010, ch. 120, § 1, p. 267; am. 2014, ch. 338, § 17, p. 838; am. 2017, ch. 193, § 1, p. 459.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 120, in the introductory language in paragraph (1)(a), added “and sailboats”; in paragraph (1)(a)(ii), substituted “Twenty-two dollars (\$22.00)” for “Twenty dollars (\$20.00),” and inserted “documented through the United States coast guard or”; in paragraph (1)(b), substituted “Seven dollars (\$7.00)” for “Five dollars (\$5.00)”; in paragraph (1)(c), in the first sentence, substituted “Licensed outfitters” for “Commercial outfitters,” inserted “as defined in [section 36-2102\(b\), Idaho Code](#),” substituted “thirty-two dollars (\$32.00)” and “fifty-seven dollars (\$57.00)” for “thirty dollars (\$30.00)” and “fifty-five dollars (\$55.00)” respectively, and “one hundred two dollars (\$102.00)” for “one hundred

dollars (\$100),” added “up to a maximum of one hundred (100) vessels”, and added the last two sentences; added paragraphs (3)(a) and (3)(b) and made related redesignations; in paragraph (3)(c), added “All remaining”; and added subsections (4) and (5).

The 2014 amendment, by ch. 338, in subsection (1), substituted “numbered” for “registered” in paragraph (a)(i) and inserted “or numbered” in paragraph (a)(ii).

The 2017 amendment, by ch. 193, substituted “Thirty dollars (\$30.00)” for “Twenty-two dollars (\$22.00)” in paragraph (1)(a)(ii).

Compiler’s Notes.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 2 of S.L. 2009, ch. 137 declared an emergency. Approved April 8, 2009.

Section 2 of S.L. 2010, ch. 120 declared an emergency. Approved March 25, 2010.

Section 2 of S.L. 2017, ch. 193, provided that this section should take effect on and after January 1, 2018.

§ 67-7009. Exemption from numbering provisions. — A vessel shall not be required to be numbered under this chapter if it is:

(1) Already covered by a number in full force and effect which has been issued to it pursuant to federal law or a federally approved numbering system of another state, provided that such vessel shall not have been within this state for a period in excess of sixty (60) consecutive days.

(2) A vessel from a country other than the United States using the waters of this state for a period of less than sixty-one (61) consecutive days.

(3) A vessel which is owned by the United States, another state or a political subdivision thereof.

(4) A vessel's lifeboat.

(5) A vessel belonging to a class of vessels which has been exempted from numbering by the department after it has found that the numbering of vessels of such class will not materially aid in their identification and has further found that the vessel would also be exempt from numbering if it were subject to federal law.

(6) A float tube.

History.

I.C., § 67-7009, as added by 1986, ch. 207, § 2, p. 515; am. 1996, ch. 54, § 3, p. 160.

§ 67-7010. Unnumbered vessels. — It shall be unlawful for an owner of a vessel to have such vessel on the waters of the state of Idaho, or for any person to operate or permit the operation of any vessel on the waters of the state of Idaho, unless it shall have a current certificate of number and display a vessel number and current validation stickers as provided by law.

History.

I.C., § 67-7010, as added by 1986, ch. 207, § 2, p. 515; am. 1989, ch. 405, § 1, p. 991; am. 2014, ch. 338, § 18, p. 838; am. 2015, ch. 244, § 61, p. 1008.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 338, substituted “certificate of number and display a vessel number” for “certificate of registration and display a registration number” near the end.

The 2015 amendment, by ch. 244, deleted the subsection (1) designation from the section.

Compiler’s Notes.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

**§ 67-7011. Use permit — Expiration — Fees — Collection exemption.
[Repealed.]**

STATUTORY NOTES

Compiler's Notes.

This section, which comprises I.C., § 67-7011, as added by 1986, ch. 207, § 2, p. 515; am. 1989, ch. 405, § 2, p. 991; am. 1992, ch. 217, § 1, p. 653, was repealed by S.L. 1994, ch. 65, § 4, effective January 1, 1995.

§ 67-7012. Advisory committee. — The county commissioners of any county may appoint a waterways committee to serve without salary or wage in an advisory capacity relating to maintenance and improvement of waterways and expenditure of moneys deposited in the county vessel account. Members of this committee shall hold office at the pleasure of the board of county commissioners.

History.

I.C., § 67-7012, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7013. Remittance of fees. — (1) There is established in the state treasury an account known as the “State Vessel Account,” to which shall be credited:

(a) Moneys or fees collected by assessors and authorized vendors, under the provisions of this section and [section 67-7008, Idaho Code](#); and

(b) All other moneys as may be provided by law.

(2) All fees collected by an assessor or authorized vendor under the provisions of [section 67-7008, Idaho Code](#), shall be forwarded to the state treasurer not later than the fifteenth day of the month following the calendar month in which the fees were collected, and the state treasurer shall then pay the moneys collected into the state vessel account and the park and recreation account [park and recreation fund], as provided in subsection (3) of this section, unless otherwise provided by law.

(3) Moneys collected shall be deposited eighty-five percent (85%) to the state vessel account, and fifteen percent (15%) to the park and recreation account [park and recreation fund] established in [section 67-4225, Idaho Code](#). The department shall remit the moneys apportioned to county units of government from the state vessel account not later than January 25, April 25, July 25 and October 25 of each year.

(4) All moneys deposited to the park and recreation account are to be appropriated for the purpose of defraying the expenses, debts and costs incurred in carrying out the powers and duties of the department as provided in this chapter, and for defraying administrative expenses of the department, including salaries and wages of employees of the department, expenses for traveling, supplies, equipment and other necessary expenses of the department as they relate to administration of this chapter. All claims against moneys apportioned to the park and recreation account shall be expended by the department and certified to the state controller, who shall, upon approval of the board of examiners, draw his warrant against the park and recreation account for all bills and claims allowed by the board. Should the related administrative costs of the department amount to less than the moneys apportioned to the park and recreation account for such purposes,

the difference shall be remitted to the state vessel account and then apportioned to all counties with a boating improvement program so that the amount apportioned to each eligible county will be in the same ratio as the county's amount of funds received from the state vessel account during the prior fiscal year by a county bears to the total amounts received during that prior fiscal year by all eligible counties.

(5) All moneys deposited to the state vessel account and appropriated to the department, shall be apportioned among the counties of the state based on the designations which the owners make on their application for a certificate of number.

(a) An owner, when purchasing a certificate of number, will be allowed to designate, on the appropriate form, a primary and secondary eligible county where his boating activity occurs. The portion of his fees which are appropriated from the state vessel account shall be apportioned to the designated counties, with seventy percent (70%) of those fees apportioned to the primary designated county and thirty percent (30%) apportioned to the secondary designated county.

(b) Should an owner designate on the appropriate form only one (1) eligible county where his boating activity occurs, the full portion of his fees which are appropriated from the state vessel account shall be apportioned to the designated county.

(c) Should an owner fail to designate on the appropriate form any eligible county where his boating activity occurs, the full portion of his fees which are appropriated from the state vessel account shall be apportioned to all counties with a boating improvement program so that the amount apportioned to each eligible county will be in the same ratio as the county's amount of funds received from the state vessel account during the prior three (3) month payment period bears to the total amounts received during that prior three (3) month payment period by all eligible counties.

(6) Only those counties in the state with a boating improvement program, as recognized by the department, shall be eligible to receive moneys from the state vessel account. A "boating improvement program" means that one or more recognized boating facilities are being developed and/or maintained

within the county's jurisdiction and/or that the county has or is actively developing a recognized boating law enforcement program.

(7) Moneys apportioned to the eligible counties shall be placed in and credited to an account which shall be known and designated as the county vessel fund, which shall be used and expended by the board of county commissioners for the protection and promotion of safety, waterways improvement, creation and improvement of parking areas for boating purposes, making and improving boat ramps and moorings, marking of waterways, search and rescue, and all things incident to such purposes including the purchase of real and personal property. The board of county commissioners is also authorized to use and expend funds from the county vessel fund outside the county when the board deems it advisable and for the public good.

(8) Within sixty (60) calendar days of the end of each county fiscal year, the county clerk shall calculate the ending fund balance of the county vessel fund for that fiscal year. If the ending fund balance is higher than the amount of revenues deposited in the county vessel fund from the state vessel account during that fiscal year, then the difference shall be remitted to the state vessel account within thirty (30) calendar days of that calculation. Moneys remitted to the state vessel account, in accordance with the provisions of this section, shall be apportioned to all counties with a boating improvement program so that the amount apportioned to each eligible county will be in the same ratio as the county's amount of funds received from the state vessel account during the prior county fiscal year bears to the total amounts received during that prior county fiscal year by all eligible counties. The provisions of this subsection shall not apply to specific sums of money in county vessel accounts, for which the county commissioners have given written notice, to the department of parks and recreation of an intention to retain those funds for a specific purpose. The notice shall specify the amount of the funds to be held, indicate the purpose for which the funds shall be utilized and provide the date when the funds will be expended. If an amended notice is not submitted by the county commissioners, moneys not expended or contractually committed by the date stated in the original notice of the board of county commissioners shall revert to the state vessel account for distribution as provided in this

subsection. All interest earned on moneys invested from a county vessel fund shall return to the county vessel fund.

History.

I.C., § 67-7013, as added by 1986, ch. 207, § 2, p. 515; am. 1990, ch. 220, § 1, p. 586; am. 1991, ch. 298, § 1, p. 783; am. 1994, ch. 65, § 5, p. 128; am. 1994, ch. 180, § 230, p. 420; am. 2014, ch. 338, § 19, p. 838.

STATUTORY NOTES

Cross References.

State board of examiners, § 67-2001 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

This section was amended by two 1994 acts — ch. 65, § 5, effective January 1, 1995 and ch. 180, § 230, contingently effective January 2, 1995 — which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 65, § 5, substituted “section 67-7008” for “sections 67-7008 and 67-7011” in subdivision (1)(a) and subsection (2); and deleted “or use permit” following “certificate of registration” in subsection (5) and subdivision (5)(a).

The 1994 amendment, by ch. 180, § 230, in subsection (1), deleted “the dedicated fund of” following “There is established in”; and in subsection (4), substituted “state controller” for “state auditor” in the second sentence.

The 2014 amendment, by ch. 338, substituted “certificate of number” for “certificate of registration” in the introductory paragraph of subsection (5) and in paragraph (5)(a).

Compiler’s Notes.

The bracketed insertions in subsections (2) and (3) were added by the compiler to correct the name of the referenced fund. See § 67-4225.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules

necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 2 of S.L. 1991, ch. 298 provided that the act should take effect on and after October 1, 1992.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 230, was effective January 2, 1995.

OPINIONS OF ATTORNEY GENERAL

County Vessel Funds.

The moneys in the county vessel funds can be spent only (1) to maintain and improve the public waters for recreational boating purposes, including but not limited to boat docks, ramps, pumpout facilities, and boat trailer parking, and (2) for boating law enforcement. Expenditure of county vessel funds for other purposes, either land-based, or for other than recreational boating, is clearly improper. OAG 89-11.

Vendor Fees.

The fees described in this section, §§ 67-7014, 67-7106, 67-7118 and 67-7126 are two different types: “Vendor” or “handling” fees (hereafter referred to in the collective as vendor fees), which the Idaho department of parks and recreation (IDPR) collects when it acts as a vendor of recreational registrations, and administrative funds which are allocated to IDPR as a percentage of recreational registration revenue. Vendor fees should be used

to offset expenses attributable to the department's registration functions. Excess vendor fees may be expended at the agency's discretion. Administrative funds may be expended to cover the direct costs of administering the respective recreational programs, and may, in addition, be used to cover a proportionate share of general administrative costs. OAG 96-4.

§ 67-7014. Administrative fees for vessels. — (1) An administrative fee of not more than one dollar and fifty cents (\$1.50) may be collected in addition to each vessel license tax collected under the provisions of section 67-7008, Idaho Code.

(2) When an assessor collects the fees, the administrative fee shall be paid to the county treasurer where the vessel is licensed and be placed in the county current expense fund for the purpose of defraying related administrative costs. The amount of the administrative fee to be collected by an assessor for each vessel shall be set by the respective boards of county commissioners conditioned on the annual budget request of their county assessor for the administration of vessel registration fees.

(3) When an authorized vendor collects the fees, the administrative fee shall be set and retained by the authorized vendor where the vessel is numbered. The administrative fee shall be used to defray related administrative costs.

History.

I.C., § 67-7014, as added by 1986, ch. 207, § 2, p. 515; am. 1994, ch. 65, § 6, p. 128; am. 2014, ch. 338, § 20, p. 838.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 338, substituted “numbered” for “registered” at the end of the first sentence in subsection (3).

Compiler’s Notes.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is

declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

OPINIONS OF ATTORNEY GENERAL

Vendor Fees.

The fees described in this section and §§ 67-7013, 67-7106, 67-7118 and 67-7126 are two different types: “Vendor” or “handling” fees (hereafter referred to in the collective as vendor fees), which the Idaho department of parks and recreation (IDPR) collects when it acts as a vendor of recreational registrations, and administrative funds which are allocated to IDPR as a percentage of recreational registration revenue. Vendor fees should be used to offset expenses attributable to the department’s registration functions. Excess vendor fees may be expended at the agency’s discretion. Administrative funds may be expended to cover the direct costs of administering the respective recreational programs, and may, in addition, be used to cover a proportionate share of general administrative costs. OAG 96-4.

§ 67-7015. Safety equipment — Additional regulations. — (1) The department is hereby authorized to promulgate rules and regulations establishing equipment requirements for any vessel subject to the provisions of law. Regulations shall be, wherever possible, in conformity with the provisions of the federal navigation laws or with navigation rules and regulations promulgated by the United States Coast Guard and shall be modified from time to time to maintain that conformity.

(2) It shall be unlawful for any person to operate or permit the operation of any vessel on the waters of the state of Idaho unless the vessel shall have on board or installed the equipment required by rules and regulations promulgated by the department.

History.

I.C., § 67-7015, as added by 1986, ch. 207, § 2, p. 515.

STATUTORY NOTES

Compiler's Notes.

For further information on the Coast Guard navigation rules, referred to in subsection (1), see <https://www.navcen.uscg.gov/?pageName=navRulesContent>.

§ 67-7016. Grossly negligent operation. — Any person who operates any motorized vessel on the waters of the state of Idaho without due caution and circumspection, and in a manner as to endanger or be likely to endanger any person or property, shall be guilty of grossly negligent operation and upon conviction shall be punished as provided in section 67-7033, Idaho Code.

History.

I.C., § 67-7016, as added by 2014, ch. 136, § 2, p. 371; am. 2015, ch. 244, § 62, p. 1008.

STATUTORY NOTES

Prior Laws.

Former § 67-7016, which comprised I.C., § 67-7016, as added by 1986, ch. 207, § 2, p. 515, was repealed by S.L. 2014, ch. 136, § 1, effective July 1, 2014.

Amendments.

The 2015 amendment, by ch. 244, substituted “provided in section 67-7033, Idaho Code” for “provided in 67-7033” at the end of the section.

§ 67-7017. Negligent operation. — It shall be unlawful for any person to operate any vessel on the waters of the state of Idaho in a careless or heedless manner so as to be indifferent to any person or property of other persons, or at a rate of speed greater than will permit him in the exercise of reasonable care to bring the vessel to a stop within the assured clear distance ahead, and whosoever shall do so is guilty of the crime of negligent operation and shall be punished as hereinafter provided.

History.

I.C., § 67-7017, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7018. Unlicensed commercial vessels. — It shall be unlawful for any person to operate, or to permit the operation of any commercial vessel on the waters of the state of Idaho unless the same is currently inspected and licensed as set forth in Title 46, United States Code, sections 362, 375, 390-392, 399, 404, 416, 435 and 451, as revised.

History.

I.C., § 67-7018, as added by 1986, ch. 207, § 2, p. 515.

STATUTORY NOTES

Federal References.

Title 46 of the United States Code was revised in 1988 by P.L. 100-710. For provisions comparable to those cited in this section, see tables at beginning of Title 46 in the United States Code Service.

§ 67-7019. Speed. — It shall be unlawful for any person to operate a vessel on the waters of the state of Idaho at a speed or under conditions that cause any damage to or affects the safety of other vessels, docks, shoreline installations or any other property or person.

History.

I.C., § 67-7019, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7020. Incapacity of operator. — It shall be unlawful for the owner of any vessel or any person having such in charge or in his control to authorize or knowingly permit the same to be operated on the waters of the state of Idaho by any person who by reason of age, physical or mental disability is incapable of operating a vessel under the prevailing circumstances.

History.

I.C., § 67-7020, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7021. Divers' warning. — It shall be unlawful for any person to operate or permit the operation of any vessel on the waters of the state of Idaho within one hundred (100) feet of the display of any recognized “diver down” flag or of the international code flag A or Alpha and all vessels approaching such a flag shall do so at reduced speed.

History.

I.C., § 67-7021, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7022. Overloading. — It shall be unlawful for any person to operate any vessel loaded with passengers or cargo beyond its safe carrying capacity taking into consideration weather and other existing operating conditions. It is also unlawful for any vessel to exceed the capacity established by a capacity plate required in this chapter.

History.

I.C., § 67-7022, as added by 1986, ch. 207, § 2, p. 515; am. 1996, ch. 54, § 4, p. 160.

§ 67-7023. Overpowering. — It shall be unlawful for any person to operate any vessel with any motor or other propulsion machinery beyond its safe power capacity taking into consideration the type and construction of the vessel and other existing operating conditions. It is also unlawful for any vessel to exceed the capacity established by a capacity plate required in this chapter.

History.

I.C., § 67-7023, as added by 1986, ch. 207, § 2, p. 515; am. 1996, ch. 54, § 5, p. 160.

§ 67-7024. Water skiing. — (1) It shall be unlawful for the operator of any vessel having in tow or otherwise assisting a person on water skis, aquaplane or similar contrivance to operate or propel the same upon or above any waters of the state of Idaho unless that vessel shall be occupied by at least one (1) other competent person who shall act as an observer. This subsection shall not apply to vessels used by representatives of duly constituted water ski schools in the giving of instruction, or to vessels used in duly authorized water ski tournaments, competitions, expositions or trials.

(2) Vessels operating within a regulation legal and permitted slalom course and that are equipped with a rear view wide angle mirror are exempt from the requirement of having at least one (1) other competent person in the boat acting as an observer as provided in subsection (1) of this section. The size of the mirror must be no less than four (4) inches from bottom to top and across from side to side. It shall be mounted firmly to give the operator a full, complete view beyond the rear of the vessel at all times.

(3) No vessel shall have in tow or shall otherwise be assisting a person on water skis, aquaplane or similar contrivance from the period of one (1) hour after sunset to one (1) hour prior to sunrise. This subsection shall not apply to vessels used in duly authorized water ski tournaments, competitions, expositions or trials.

(4) All vessels having in tow or otherwise assisting a person on water skis, aquaplane or similar contrivance shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person or create excessive wake.

(5) No person shall operate or manipulate any vessel's attached towrope or other device by which the direction or location of water skis, aquaplane or similar device may be affected or controlled in such a way as to cause the same or any person thereon to collide with or strike against any person or object other than a jumping ramp or in conjunction with skiing over a slalom course.

History.

I.C., § 67-7024, as added by 1986, ch. 207, § 2, p. 515; am. 2011, ch. 114, § 1, p. 313.

STATUTORY NOTES**Amendments.**

The 2011 amendment, by ch. 114, in subsection (1), substituted “This subsection” for “This section” in the last sentence; added subsection (2); and redesignated former subsections (2), (3), and (4), as present subsections (3), (4), and (5), respectively.

§ 67-7025. Interference with navigation. — It shall be unlawful for any person to operate any vessel on the water of this state in a manner that shall unreasonably or unnecessarily interfere with other vessels or with free and proper navigation on the waterways of the state. Violation of the rules of the road shall constitute interference.

History.

I.C., § 67-7025, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7026. Restricted areas. — It shall be unlawful for any person to operate a vessel on the water of this state in any area which has been clearly marked in accordance with, and as authorized by the laws of this state, by buoys or some other distinguishing device as a bathing, swimming or other restricted area. This section shall not apply in the case of an emergency or to patrol or rescue vessels.

History.

I.C., § 67-7026, as added by 1986, ch. 207, § 2, p. 515.

CASE NOTES

Cited Dupont v. Idaho State Bd. of Land Comm'rs, 134 Idaho 618, 7 P.3d 1095 (2000).

§ 67-7027. Collisions, accidents and casualties — Reports. — (1) It shall be unlawful for the operator of any vessel on the water of this state to fail to report any accident or casualty occasioned by the operation of a vessel and as herein provided.

(2) It shall be the duty of the operator of any vessel involved in a collision, accident or other casualty, so far as he can do so without serious danger to his own vessel, crew, passengers and guests to render aid to other persons affected by the collision, accident or other casualty and also to give his name, address and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident or other casualty.

(3) It shall be the duty of the operator of any vessel involved in a collision, accident or other casualty resulting in death or injury to a person or damage to property in excess of one thousand five hundred dollars (\$1,500):

(a) To immediately, by the quickest means of communication, give notice of the accident to the sheriff of the county in which the accident occurred; and

(b) To file with the sheriff of the county in which the accident occurred, a boating accident report within forty-eight (48) hours of the occurrence if a person dies within twenty-four (24) hours of the occurrence, or in the case of an incapacitating injury or if a person disappears from the vessel. A report shall be filed within ten (10) days of the occurrence or death if an earlier report is not required by this paragraph. The report shall be made on forms provided by the department, but shall not be referred to in any way as evidence in any judicial proceeding. A copy of such report shall also be readily transmitted by the sheriff to the designated state boating safety coordinator.

(4) If the operator of the vessel involved in a collision, accident, or other casualty is incapacitated, and there is another person in the vessel at the time of the accident capable of giving immediate notice of an accident as

required herein, the person shall give or cause to be given the notice not given by the operator.

(5) If the operator of the vessel involved in a collision, accident, or other casualty is incapacitated, the investigating law enforcement officer shall file the required form as prescribed by the director.

History.

I.C., § 67-7027, as added by 1986, ch. 207, § 2, p. 515; am. 1990, ch. 75, § 1, p. 158; am. 1996, ch. 54, § 6, p. 160; am. 2010, ch. 71, § 1, p. 119.

STATUTORY NOTES

Amendments.

The 2010 amendment, by ch. 71, substituted “one thousand five hundred dollars (\$1,500)” for “five hundred dollars (\$500)” in the introductory paragraph in subsection (3).

§ 67-7028. Enforcement. — The sheriffs and deputy sheriffs of the respective counties shall be primarily responsible for the enforcement of this chapter and in the exercise of their authority may stop and board any vessel subject to law.

History.

I.C., § 67-7028, as added by 1986, ch. 207, § 2, p. 515; am. 1991, ch. 11, § 1, p. 27.

RESEARCH REFERENCES

Idaho Law Review. — Freedom to Float: Requiring Reasonable Suspicion for Boating Stops on Idaho Waterways, Comment. 52 Idaho L. Rev. 547 (2016).

§ 67-7029. Agents of the department. — (1) The assessors of various counties of the state shall be agents of the department and shall perform such duties as are prescribed by law.

(2) The department may authorize any person to act as agent for the issuance of certificates of number. In the event a person accepts such authorization, he shall be assigned a block of vessel numbers, validation stickers and certificates of number, which upon issuance in conformity with law and with any rules of the department shall be valid as if issued directly by an assessor.

History.

I.C., § 67-7029, as added by 1986, ch. 207, § 2, p. 515; am. 1994, ch. 65, § 7, p. 128; am. 2014, ch. 338, § 21, p. 838.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 338, in subsection (2), substituted “certificate of number” for “certificate of registration” at the end of the first sentence and, in the second sentence, substituted “block of vessel numbers, validation stickers and certificates of number” for “block of numbers and certificates.”

Compiler’s Notes.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 8 of S.L. 1994, ch. 65 provided that the act should be in full force and effect on January 1, 1995.

§ 67-7030. Regattas, races, marine events, tournaments and exhibitions. — (1) The sheriff in each county may authorize the holding of regattas, marine events, races, tournaments or exhibitions on any waters of this state located within the county. The department may adopt rules and regulations concerning the safety of vessels and persons.

(2) Whenever a regatta, race, tournament, marine event or exhibition is proposed to be held, the person in charge shall, at least thirty (30) days prior thereto, file an application for permission to hold an event with the sheriff in the county of the proposed event, and a copy of the application shall be readily transmitted by the sheriff to the designated state boating safety coordinator.

(3) The application shall set forth the date, time and location where the event is proposed to be held, together with the following information:

- (a) The name and address of the sponsoring organization.
- (b) The name, address and telephone number of the person or persons in charge of the event.
- (c) The nature and purpose of the event.
- (d) Information as to general public interest.
- (e) Estimated number and type of vessels participating in the event.
- (f) Estimated number and types of spectator vessels.
- (g) Number of vessels being furnished by sponsoring organizations to patrol the event.
- (h) A time schedule and description of events.
- (i) A section of a chart or scale drawing showing the boundaries of the event, various watercourses or areas to be used by the participants, officials and spectator vessels.

(4) The provisions of this section shall not be exclusive with respect to waters of this state over which jurisdiction is shared with the United States

and shall not exempt any person from compliance with applicable federal law or regulation.

(5) Competitors in any race, regatta or trial or other marine event authorized by a sheriff shall be exempt from the provisions of law with regard to speed while on an authorized racing course and from provisions of this chapter concerning equipment, noise and numbering. These exemptions are exclusive and shall apply only while an operator of a vessel is engaged in an authorized race, regatta or trial.

(6) It shall be unlawful for any person to conduct any regatta, marine event, race, tournament or exhibition on the waters of the state of Idaho unless he shall have had a marine event permit issued to him as provided by law.

History.

I.C., § 67-7030, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7031. Marking of water areas — Procedures — Local rules. —

(1) The department may make or adopt appropriate rules for the marking of the water areas in this state through the placement of aids to navigation and regulatory markers. Such rules shall establish a marking system of aids to navigation prescribed by the United States Coast Guard and shall give due regard to the system of uniform waterway markers approved by the advisory panel of state officials to the merchant marine council of the United States Coast Guard. No city, county, other political subdivision or other person shall mark the waters of this state in any manner in conflict with the marking system prescribed by the department or without the specific authority of the department.

(2) The provisions of this chapter shall govern the operation, equipment, numbering and all other matters relating thereto whenever any vessel shall be operated on the waters of this state or when any activity regulated by this chapter shall take place thereon. Nothing in this chapter shall be construed to prevent the adoption of any ordinance or local law relating to operation and equipment of vessels, so long as such ordinances are not in conflict with the provisions of law.

(3) Any political subdivision of the state of Idaho may at any time, but only after sufficient public notice is given, adopt local ordinances with reference to the operation of vessels on any waters within its territorial limits or with reference to swimming within areas of intense or hazardous vessel traffic, provided the ordinances are intended to promote or protect the health, safety and general welfare of its citizenry.

(4) Any political subdivision of the state of Idaho may at any time, but only after sufficient public notice is given, adopt ordinances which establish operational zones for personal watercraft on any waters within its territorial limits. Personal watercraft operational zone designations are limited to: (a) No wake or less than five (5) miles per hour; (b) Personal watercraft only; (c) No personal watercraft allowed; or (d) Distance from shoreline.

History.

I.C., § 67-7031, as added by 1986, ch. 207, § 2, p. 515; am. 1996, ch. 335, § 3, p. 1132.

STATUTORY NOTES

Compiler's Notes.

For further information on the United States Coast Guard aids to navigation system, referred to in subsection (1), see *<https://www.uscgboating.org/ATON/index.html>*.

§ 67-7032. Owner's responsibility — Presumption of consent. — (1)

The owner of the vessel shall be liable for any injury or damage occasioned by the negligent operation of it, whether the negligence consists of a violation of the provisions of law, or in the failure to observe ordinary care in the operation as the rules of the road require. It shall be presumed a vessel is being operated with the knowledge and consent of the owner if, at the time of the injury or damage, it is under the control of the owner's spouse, father, mother, brother, sister, son, or daughter, or other immediate member of the family. The owner shall not otherwise be liable, however, unless the vessel is being used with his consent, either expressed or implied.

(2) Nothing contained herein shall be construed to relieve any other person from any liability which he would have otherwise had, but nothing contained herein shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

(3) Nothing contained herein shall deprive the owner of any vessel of any of the rights, limitations or exemptions from liability afforded such owner under any federal statutes.

History.

I.C., § 67-7032, as added by 1986, ch. 207, § 2, p. 515.

§ 67-7033. Penalties. — (1) Unless otherwise specifically provided, any person who shall violate any of the provisions of this chapter or any rule promulgated by the department pursuant to this chapter shall be guilty of an infraction and be punished as provided in section 18-111, Idaho Code.

(2) Any person who shall be convicted of any second or subsequent violation of any of the provisions of law in addition to any other penalties authorized herein shall be required to attend and successfully complete a course on safe boating approved by the state boating law administrator and may, at the discretion of the court, be refused the privilege of operating any vessel on any of the waters of this state for a period not to exceed two (2) years.

(3) Any person who shall operate any vessel during the period when he has been denied the privilege to so operate by virtue of subsection (2) of this section, shall be guilty of a misdemeanor and upon conviction, shall be punished by a fine of not more than three hundred dollars (\$300), or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment.

(4) Any manufacturer who shall violate the provisions of this chapter with respect to the obligation for the installation of capacity of certification plates shall be guilty of an infraction, and upon being found to have committed the infraction, shall be punished as provided in [section 18-111, Idaho Code](#), and each failure to affix a capacity or certification plate as provided in this chapter shall constitute a separate offense for each vessel with respect to which the failure occurs.

(5) Any person who pleads guilty to or is found guilty of violating the provisions of section 67-7016, 67-7017, 67-7025, 67-7026 or 67-7027, Idaho Code, shall be guilty of a misdemeanor and may be fined not more than three hundred dollars (\$300), imprisoned for a period not to exceed thirty (30) days, or by both such fine and imprisonment.

(6) Any person who pleads guilty to or is found guilty of violating the provisions of [section 67-7034, Idaho Code](#), shall be guilty of a misdemeanor and:

- (a) May be fined an amount not to exceed one thousand dollars (\$1,000);
- (b) May be imprisoned for a period not to exceed six (6) months; and
- (c) Shall be required to attend and successfully complete a course on safe boating approved by the designated state boating law administrator.

History.

I.C., § 67-7033, as added by 1986, ch. 207, § 2, p. 515; am. 1997, ch. 101, § 2, p. 232; am. 1997, ch. 216, § 2, p. 636; am. 2001, ch. 159, § 1, p. 567.

STATUTORY NOTES

Amendments.

This section was amended by two 1997 acts which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 101, § 2, in subsection (1) at the beginning of the subsection substituted “Unless otherwise specifically provided, any” for “Any”, deleted “or regulation” following “or any rule” and added subsection (5).

The 1997 amendment, by ch. 216, § 2, in subsection (1) deleted “or regulation” following “or any rule” and in subsection (2) added “shall be required to attend and successfully complete a course on safe boating approved by the state boating law administrator and” following “penalties authorized herein”.

Compiler’s Notes.

Section 4 of S.L. 1986, ch. 207 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 5 of S.L. 1986, ch. 207 read: “This act shall be in full force and effect on and after January 1, 1987.”

§ 67-7034. Persons under the influence of alcohol, drugs or any other intoxicating substances. —

(1)(a) It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or who has an alcohol concentration of 0.08, as defined in subsection (5) of this section, or more, as shown by analysis of his blood, urine, breath, or other bodily substance, to operate or be in actual physical control of a vessel on the waters of the state of Idaho.

(b) It is unlawful for any person under twenty-one (21) years of age who has an alcohol concentration of at least 0.02 but less than 0.10, as defined in subsection (5) of this section, to operate or be in actual physical control of a vessel on the waters of the state.

(2) Any person having an alcohol concentration of less than 0.08, as defined in subsection (5) of this section, as shown by analysis of his blood, urine, breath, or other bodily substance, by a test requested by an authorized law enforcement officer shall not be prosecuted for operating under the influence of alcohol, except as provided in subsection (1)(a) and subsection (3) of this section. Any person who does not take a test to determine alcohol concentration or whose test result is determined by the court to be unreliable or inadmissible against him, may be prosecuted for operating or being in actual physical control of a vessel while under the influence of alcohol, drugs, or any other intoxicating substances, or other competent evidence.

(3) If the results of the test requested by an authorized law enforcement officer show a person's alcohol concentration of less than 0.08, as defined in subsection (5) of this section, such fact may be considered with other competent evidence of drug use other than alcohol in determining the guilt or innocence of the defendant. This subsection does not preclude prosecution for alcohol intoxication for persons described in subsection (1)(b) of this section.

(4) Persons authorized to withdraw blood for the purposes of determining content of alcohol or other intoxicating substances are those persons

authorized in [section 18-8003, Idaho Code](#). Immunity from liability in any civil proceeding for specified causes of action shall be extended to personnel as provided in [section 18-8002, Idaho Code](#).

(5) For purposes of this chapter, an evidentiary test for alcohol concentration is a determination of the percent by weight of alcohol in blood and shall be based upon a formula of grams of alcohol per one hundred (100) cubic centimeters of blood, per two hundred ten (210) liters of breath or sixty-seven (67) milliliters of urine. Analysis of blood, urine or breath for the purpose of determining the blood alcohol concentration shall be performed by a laboratory operated by the Idaho state police or by a laboratory approved by the Idaho state police under the provisions of approval and certification standards to be set by that department, or by any other method approved by the Idaho state police. Notwithstanding any other provision of law or rule of court, the results of any test for alcohol concentration and records relating to calibration, approval, certification or quality control performed by a laboratory operated or approved by the Idaho state police or by any other method approved by the Idaho state police shall be admissible in any proceeding in this state without the necessity of producing a witness to establish the reliability of the testing procedure for examination.

(6) It is unlawful for any person who is an habitual user of, or under the influence of any narcotic drug, or who is under the influence of any other drug or any combination of alcohol and any drug to a degree which renders him incapable of safely operating a vessel to operate or be in actual physical control of a vessel on the waters of the state of Idaho. The fact that any person charged with a violation of the provisions of this subsection is or has been entitled to use such drug under the laws of this state shall not constitute a defense against any charge of a violation of the provisions of this subsection.

(7) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

History.

I.C., § 67-7034, as added by 1988, ch. 368, § 2, p. 1084; am. 1989, ch. 387, § 1, p. 963; am. 1992, ch. 133, § 3, p. 416; am. 1997, ch. 101, § 3, p. 232; am. 1997, ch. 158, § 3, p. 457; am. 2000, ch. 469, § 137, p. 1450.

STATUTORY NOTES

Cross References.

Driving under the influence, § 18-8001 et seq.

Idaho state police, § 67-2901 et seq.

Amendments.

This section was amended by two 1997 acts which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 101, § 3, in subsection (1) added the designation “(a)” following the designation “(1)” and added subsection (1) (b); in subsection (2) in the first sentence added “(1)(a) and subsection (3)” following “as provided in subsection”; and in subsection (3) added the last sentence.

The 1997 amendment, by ch. 158, § 3, in present subsection (1)(a) and subsections (2) and (3) substituted “0.08” for “0.10”.

Effective Dates.

Section 2 of S.L. 1989, ch. 387 declared an emergency. Approved April 7, 1989.

RESEARCH REFERENCES

ALR. — Authentication of blood sample taken from human body for purposes of determining blood alcohol content. **76 A.L.R.5th 1.**

Validity, construction, and application of statutes prohibiting boating while intoxicated, boating while under the influence, or the like. **47 A.L.R.6th 107.**

§ 67-7035. Aggravated operating while under the influence of alcohol, drugs or any other intoxicating substances. — (1) Any person causing great bodily harm, permanent disability or permanent disfigurement to any person other than himself in committing a violation of the provisions of section 67-7034, Idaho Code, is guilty of a felony, and upon conviction:

(a) Shall be sentenced to the state board of correction for not to exceed five (5) years, provided that notwithstanding the provisions of [section 19-2601, Idaho Code](#), should the court impose any sentence other than incarceration in the state penitentiary, the defendant shall be sentenced to the county jail for a mandatory minimum period of not less than thirty (30) days; and further provided that notwithstanding the provisions of [section 18-111, Idaho Code](#), a conviction under this section shall be deemed a felony; (b) May be fined an amount not to exceed five thousand dollars (\$5,000); (c) Shall have his privileges to operate a vessel suspended by the court for a mandatory minimum period of one (1) year after release from imprisonment, and may have his privileges to operate a vessel suspended by the court for not to exceed two (2) years after release from imprisonment, during which time he shall have absolutely no privileges of any kind to operate a vessel; and (d) Shall, when appropriate, be ordered by the court to pay restitution.

(2) Notwithstanding any other provision of law, any evidence of conviction under this section shall be admissible in any civil action for damages resulting from the occurrence. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

History.

[I.C., § 67-7035](#), as added by 1988, ch. 368, § 3, p. 1084.

STATUTORY NOTES

Cross References.

State board of correction, § 20-201A.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutes prohibiting boating while intoxicated, boating while under the influence, or the like. [47 A.L.R.6th 107](#).

§ 67-7036. Testing blood of persons killed in vessel accidents. — The director of the Idaho state police, jointly with the various county coroners, shall provide a system and procedure whereby all coroners in the state of Idaho shall obtain blood samples from all vessel operators who have died as a result of and contemporaneously with an accident involving a vessel.

All investigating sheriffs, deputy sheriffs, or police officers shall report such fatalities to the county coroner or follow the procedure established by the joint action of the director of the Idaho state police and the various coroners.

The blood sample, or result of blood testing, with such information as may be required, will be delivered to the director of the Idaho state police or his designee. Upon receipt of such sample the director will cause such tests as may be required to determine the amount of alcohol, narcotics and dangerous drugs contained in such sample.

The results of such tests shall be used exclusively for statistical purposes and the sample shall never be identified with the name of the deceased. Any person releasing or making public such information other than as herein prescribed, shall be guilty of a misdemeanor.

History.

I.C., § 67-7036, as added by 1988, ch. 368, § 4, p. 1084; am. 2000, ch. 469, § 138, p. 1450; am. 2002, ch. 44, § 2, p. 98.

STATUTORY NOTES

Cross References.

Director of Idaho state police, § 67-2901.

Compiler's Notes.

Section 5 of S.L. 1988, ch. 368 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared

invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 6 of S.L. 1988, ch. 368 declared an emergency. Approved April 6, 1988.

§ 67-7037. Test of operator for alcohol concentration, presence of drugs or other intoxicating substances. — (1) Any person who operates or is in actual physical control of a vessel on the waters of the state of Idaho shall be deemed to have given his consent to evidentiary testing for concentration of alcohol, as defined in section 67-7034, Idaho Code, and to have given his consent to evidentiary testing for the presence of drugs or other intoxicating substances, provided that such testing is administered at the request of a peace officer having reasonable grounds to believe that person has been operating or in actual physical control of a vessel in violation of the provisions of section 67-7034, Idaho Code, or section 67-7035, Idaho Code.

(2) Such person shall not have the right to consult with an attorney before submitting to such evidentiary testing.

(3) At the time evidentiary testing for concentration of alcohol, or for the presence of drugs or other intoxicating substances is requested, the person shall be informed that if he refuses to submit to or if he fails to complete evidentiary testing:

(a) He is subject to a civil penalty of two hundred dollars (\$200) for refusing to take the test;

(b) He has the right to request a hearing within seven (7) days to show cause why he refused to submit to, or complete evidentiary testing;

(c) If he does not request a hearing or does not prevail at the hearing, the court shall sustain the civil penalty; and

(d) After submitting to the evidentiary testing he may, when practicable, at his own expense, have additional tests made by a person of his own choosing.

(4) After submitting to evidentiary testing at the request of the peace officer, he may, when practicable, at his own expense, have additional tests made by a person of his own choosing. The failure or inability to obtain an additional test or tests by a person shall not preclude the admission of results of evidentiary testing for alcohol concentration or for the presence of

drugs or other intoxicating substances taken at the direction of the peace officer unless the additional test was denied by the peace officer.

(5) If the operator refuses to submit to or complete evidentiary testing after the information has been given in accordance with subsection (3) of this section:

(a) A written request may be made, by the operator, within seven (7) calendar days of receipt of the complaint and summons, for a hearing before the court. If requested, the hearing must be held within thirty (30) days of the arrest unless this period is, for good cause shown, extended by the court for one (1) additional thirty (30) day period. The hearing shall be limited to the question of why the defendant did not submit to, or complete evidentiary testing, and the burden of proof shall be upon the defendant. The court shall sustain a two hundred dollar (\$200) civil penalty immediately unless it finds that the peace officer did not have legal cause to stop and request the operator to take the test or that the request violated the operator's civil rights;

(b) If a hearing is not requested by written notice to the court concerned within seven (7) calendar days, upon receipt of a sworn statement by the peace officer of the circumstances of the refusal, the court shall sustain a two hundred dollar (\$200) civil penalty.

(6) A sustained civil penalty under this section shall be a civil penalty separate and apart from any other penalty imposed for a violation of other Idaho vessel statutes or for a conviction of an offense pursuant to this chapter, and may be appealed to the district court.

(7) Notwithstanding any other provision of law to the contrary, the civil penalty imposed under the provisions of this section must be paid, as ordered by the court, to the county justice fund or the county current expense fund where the incident occurred.

(8) If a person does not pay the civil penalty imposed as provided in this section within thirty (30) days of the time the penalty was imposed, the prosecuting authority representing the political subdivision where the incident occurred may petition the court in the jurisdiction where the incident occurred to file the order imposing the civil penalty as an order of the court. Once entered, the order may be enforced in the same manner as a

final judgment of the court. In addition to the penalty, attorney's fees, costs, and interest may be assessed against any person who fails to pay the civil penalty.

(9) A peace officer is empowered to order evidentiary testing as provided in [section 18-8002\(6\), Idaho Code](#).

(10) Any written notice required by this section shall be effective upon mailing.

(11) For the purposes of this section "evidentiary testing" shall mean a procedure or test or series of procedures or tests, including the additional test authorized in subsection (12) of this section, utilized to determine the concentration of alcohol or the presence of drugs or other intoxicating substances in a person.

(12) A person who submits to a breath test for alcohol concentration, as defined in subsection (5) of [section 67-7034, Idaho Code](#), may also be requested to submit to a second evidentiary test of blood or urine for the purpose of determining the presence of drugs or other intoxicating substances if the peace officer has reasonable cause to believe that a person was operating under the influence of any drug or intoxicating substance or the combined influence of alcohol and any drug or intoxicating substance. The peace officer shall state in his report the facts upon which that belief is based.

History.

[I.C., § 67-7037](#), as added by 1993, ch. 250, § 1, p. 873.

STATUTORY NOTES

Effective Dates.

Section 2 of S.L. 1993, ch. 250 declared an emergency. Approved March 29, 1993.

§ 67-7038. Mufflers and noise restrictions. — (1) It shall be unlawful for any person to operate, or permit the operation of, any motorboat on the waters of the state of Idaho unless the motorboat shall at all times be equipped with a muffler or a muffler system in good working order and in constant operation and effectively installed to prevent any excessive or unusual noise.

(2) For the purposes of this section, “muffler” shall mean a sound suppression device or system designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and which prevents excessive or unusual noise.

(3) It shall be unlawful for any person to operate, or permit the operation of, any motorboat on the waters of the state of Idaho in such a manner as to exceed the following noise levels:

(a) For motorboats manufactured before January 1, 1995, a noise level of 90dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005;

(b) For motorboats manufactured on or after January 1, 1995, a noise level of 88dB(A) when subjected to a stationary sound level test as prescribed by SAE J2005.

(4) It shall be unlawful for any person to operate, or permit the operation of, any motorboat on any lake or reservoir of the state of Idaho, which is more than five hundred (500) feet in width, in such a manner as to exceed a noise level of 75dB(A) measured as specified in SAE J1970. Provided, that such measurement shall not preclude a stationary sound level test as prescribed by SAE J2005.

(5) No person shall operate, or give permission for the operation of, any motorboat on the waters of the state of Idaho that is equipped with an altered muffler or a muffler cutout, bypass or other device designed or so installed so that it can be used to continually or intermittently bypass or otherwise reduce or eliminate the effectiveness of any muffler or muffler system installed in accordance with the provisions of this section.

(6) No person shall remove, alter or otherwise modify in any way a muffler or muffler system in a manner which will prevent it from being operated in accordance with the provisions of this section.

(7) Effective January 1, 1995, a person shall not manufacture, sell or offer for sale any motorboat unless it is equipped with a muffler or muffler system which does comply with subsection (3) of this section. This subsection shall not apply to motorboats designed, manufactured and sold for the sole purpose of competing in racing events and for no other purpose.

(8) The provisions of this section shall not apply to motorboats registered and actually participating in an authorized marine event, or to a motorboat being operated by a boat or engine manufacturer for the sole purpose of testing and/or development.

(9) Any peace officer who has reason to believe that a motorboat is not in compliance with the noise levels established in this section may direct the operator of such motorboat to submit the motorboat to an on-site test to measure noise levels, with the officer on board if such officer chooses, and the operator shall comply with such request. If such motorboat exceeds the decibel levels established in this section, the officer may direct the operator to take immediate and reasonable measures to correct the violation, including returning the motorboat to a mooring and keeping the motorboat at such mooring until the violation is corrected or ceases.

History.

I.C., § 67-7038, as added by 1993, ch. 146, § 1, p. 382.

STATUTORY NOTES

Compiler's Notes.

For further information on SAE J2005, referred to in subsections (3) and (4), see <https://www.sae.org/standards/content/j2005 201806>.

For further information on SAE J1970, referred to in subsection (4), see <https://www.sae.org/standards/content/j1970 201102>.

Section 2 of S.L. 1993, ch. 146 read: “The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared

invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.”

Effective Dates.

Section 3 of S.L. 1993, ch. 146 provided that the act shall be in full force and effect on January 1, 1994.

§ 67-7039. Vessel Titling Act. — (1) Sections 67-7039 through 67-7041, Idaho Code, shall be known and cited as the “Vessel Titling Act.”

(2) The Idaho transportation department is hereby granted authority to carry out the administration of the provisions of this act and to promulgate rules to effectuate that purpose.

(3) All titling procedures for vessels shall be governed by title 49, Idaho Code. Unless otherwise provided, the term “vessel” shall be interchangeable with the term “vehicle” throughout title 49, Idaho Code, for the purposes of vessel titling and vessel dealers and salesmen licensing requirements.

(4) All vessel dealers, wholesalers, manufacturers, salesmen, distributors and representatives shall be required to be licensed as required by chapter 16, title 49, Idaho Code.

(5) All vessel dealers shall be required to procure and file a bond in the amount required in [section 49-1608, Idaho Code](#).

History.

[I.C., § 67-7039](#), as added by 1999, ch. 298, § 3, p. 746; am. 2001, ch. 73, § 17, p. 154.

STATUTORY NOTES

Cross References.

Idaho transportation department, § 40-501 et seq.

Compiler’s Notes.

The term “this act” in subsection (2) refers to S.L. 1999, Chapter 298, which is codified as §§ 49-123, 49-501A, and 67-7039 to 67-7041.

Effective Dates.

Section 6 of S.L. 1999, ch. 298 provided that the act shall be in full force and effect on and after January 1, 2000.

CASE NOTES

Bankruptcy.

Although a debtor's name was removed from a boat's title for no consideration at a time when he was insolvent, summary judgment was not granted in favor of a trustee in his action to avoid the transfer under 11 U.S.C.S. § 548(a)(1)(B), as there was a question of material fact concerning the value of the debtor's interest that was transferred to the co-owner. The fact that, under § 49-503 and subsection (3) of this section, the debtor had the authority to sell the boat while his name was on the title, and gave up that right when his name was removed from the title, required valuing the interest he transferred, and any gain he realized from the transfer in the form of decreased liability for such items, as maintenance and upkeep. *Gugino v. Ortega (In re Pierce)*, 428 B.R. 524 (Bankr. D. Idaho 2010).

When the state issued a new certificate of title pursuant to § 49-503 and subsection (3) of this section, changing the ownership of a boat from a debtor and his co-owner to just the co-owner, a transfer occurred for purposes of 11 U.S.C.S. §§ 101(54)(D) and 548(d)(1). *Gugino v. Ortega (In re Pierce)*, 428 B.R. 524 (Bankr. D. Idaho 2010).

§ 67-7040. Application to certain vessels. — (1) The provisions of the vessel titling act shall apply to every 2000 and newer model year vessel upon transfer of ownership, and optionally to all other vessels of a model year prior to 2000, effective on and after January 1, 2000, even though vessels need not be registered under the provisions of chapter 4, title 49, Idaho Code. Vessels shall be issued a certificate of number as provided in section 67-7008, Idaho Code.

(2) The provisions of the vessel titling act shall apply exclusively to vessels with a permanently attached mode of propulsion, such as: an inboard motor, sail, personal watercraft, or other propelling machinery, and all vessels over twelve (12) feet regardless of mode of propulsion, except: driftboats, canoes, kayaks, inflatable vessels, rafts, barges, nonmotorized paddle vessels, sailboards, tenders, seaplanes, documented vessels, and vessels owned by the United States or a foreign state or political subdivision.

(3) Once titled, the vessel remains a titled vessel and is subject to the requirements of chapter 5, title 49, Idaho Code.

History.

I.C., § 67-7040, as added by 1999, ch. 298, § 4, p. 746; am. 2001, ch. 73, § 18, p. 154; am. 2014, ch. 38, § 20, p. 66; am. 2014, ch. 338, § 22, p. 838.

STATUTORY NOTES

Amendments.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 38, deleted “rowboats” preceding “driftboats, canoes” in subsection (2).

The 2014 amendment, by ch. 338, substituted “certificate of number” for “certificate of registration” near the end of the last sentence in subsection (1).

Compiler's Notes.

Section 15 of S.L. 2014, ch. 338 provided: "The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act."

Section 23 of S.L. 2014, ch. 338 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 6 of S.L. 1999, ch. 298 provided that the act shall be in full force and effect on and after January 1, 2000.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. [118 A.L.R.5th 347](#).

§ 67-7041. Liens and encumbrances — Filing — Notation on certificate — Constructive notice. — No lien or encumbrance created on or after January 1, 2000, on any vessel titled under the laws of this state, shall be perfected as against creditors or subsequent purchasers or encumbrancers without notice until the holder of the lien or encumbrance, or his successor, agent or assignee, has complied with the requirements of section 49-504, Idaho Code, and has filed the title application and all required supporting documents with the Idaho transportation department or an agent of that department.

History.

I.C., § 67-7041, as added by 1999, ch. 298, § 5, p. 746; am. 2001, ch. 73, § 19, p. 154.

STATUTORY NOTES

Cross References.

Idaho transportation department, § 40-501 et seq.

Effective Dates.

Section 6 of S.L. 1999, ch. 298 provided that the act shall be in full force and effect on and after January 1, 2000.

§ 67-7042 — 67-7049. [Reserved.]

§ 67-7050. Reciprocal agreements. — (1) The department is authorized to enter into bilateral, reciprocal agreements with other jurisdictions to provide mutual assistance in the disposition of vessel offenses committed by residents of one (1) jurisdiction while in the other jurisdiction.

(2) The vessel offense reciprocal agreements entered into on behalf of this state with all other states legally joining therein shall be in a form substantially as follows: ARTICLE I — FINDINGS AND DECLARATION OF POLICY

(1) The party states find that:

(a) The safety of their waters is materially affected by the degree of compliance with state laws and local ordinances relating to the operation of vessels.

(b) Violation of such laws or ordinances is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(2) It is the policy of each of the party states to promote compliance with the laws, ordinances and administrative rules and regulations relating to the operation of vessels by their operators in each of the jurisdictions where such operators operate vessels.

ARTICLE II — DEFINITION

“State” means a state of the United States and the District of Columbia.

ARTICLE III — CONCURRENT JURISDICTION

(1) If conduct is prohibited by two (2) adjoining party states, courts and law enforcement officers in either state who have jurisdiction over vessel offenses committed where waters form a common interstate boundary have concurrent jurisdiction to arrest, prosecute and try offenders for the

prohibited conduct committed anywhere on the boundary water between the two (2) states.

(2) These reciprocal agreements will not authorize: (a) Prosecution of any person for conduct that is unlawful in the state where it was committed, but lawful in the other party state.

(b) A prohibited conduct by the party state.

ARTICLE IV — CONSTRUCTION AND SEVERABILITY

These reciprocal agreements shall be liberally construed so as to effectuate the purposes thereof. The provisions of these reciprocal agreements shall be severable and if any phrase, clause, sentence or provision of these reciprocal agreements is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of these reciprocal agreements and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If the reciprocal agreements shall be held contrary to the constitution of any state party thereto, the reciprocal agreements shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History.

I.C., § 67-7050, as added by 1993, ch. 252, § 1, p. 877.

§ 67-7051 — 67-7076. [Reserved.]

§ 67-7077. Operation of vessels. — It shall be unlawful for any person to operate any vessel on the water of this state:

(a) In a negligent manner as prescribed in [section 67-7017, Idaho Code](#), while within one hundred (100) feet of another vessel; or

(b) At a speed greater than no wake or five (5) miles per hour while within one hundred (100) feet of a dock, swimmer or other person in the water, except when safely pulling a water skier from a dock, or when safely dropping off a water skier at or near a dock, or when the swimmer or other person in the water is the vessel's water skier. Except when dropping off a skier at or near a dock all efforts shall be made to reasonably minimize the time and distance the vessel shall travel inside the one hundred (100) foot zone while operating at speeds greater than no wake or five (5) miles per hour.

History.

[I.C., § 67-7077](#), as added by 1996, ch. 335, § 4, p. 1132; am. 1997, ch. 216, § 3, p. 636; am. 1998, ch. 232, § 1, p. 790; am. 2003, ch. 232, § 1, p. 592.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state statutes and local ordinances governing personal watercraft use. [118 A.L.R.5th 347](#).

§ 67-7078. Personal watercraft liveries. — (1) Any person who offers a personal watercraft for lease, hire or rent shall:

(a) Provide a Coast Guard approved Type I, II, III or V personal flotation device and any other required safety equipment to all persons who lease, hire or rent the personal watercraft at no additional charge; (b) Display a safety information decal provided by the department describing laws, rules and safety measures pertaining to personal watercraft in a location clearly visible from the operator's position on each personal watercraft leased, hired or rented; (c) Instruct each person that will operate the personal watercraft during the rental or lease period on the laws, rules and safe operation of the personal watercraft as prescribed by the department; (d) Provide to the person leasing, hiring or renting the personal watercraft a written copy of acknowledgement of instruction on forms provided by the department. Each copy must contain the names and physical description of all persons eligible to operate the personal watercraft during the rental or lease period.

(2) It is unlawful for any person to operate a personal watercraft which is being rented, hired or leased before being instructed on the laws, rules and safe operation of personal watercraft by the lessor as prescribed in this chapter.

(3) Any person operating a personal watercraft which is leased, hired or rented must carry on board a written copy of acknowledgement of instruction whenever the personal watercraft is in operation.

(4) Any person violating the provisions of this section shall be guilty of an infraction and punishable as provided in [section 18-113A, Idaho Code](#).

History.

[I.C., § 67-7078](#), as added by 1996, ch. 335, § 4, p. 1132.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 1996, ch. 335 read: “Legislative Intent. The legislature hereby finds that the regulation of personal watercraft as a separate and distinct type of vessel is necessary to protect the health, safety and general welfare of its citizenry.”

Chapter 71 RECREATIONAL ACTIVITIES

Sec.

67-7101. Definitions.

67-7102. Requirement that snowmobile be numbered.

67-7103. Application for number — Attachment of validation stickers — Certificate — Application for transfer of certificate — Transfer of certificate fee — Temporary number — Fees.

67-7104. Nonresident snowmobile user certificate required.

67-7105. Government ownership.

67-7106. Distribution of moneys collected — County snowmobile fund — State snowmobile fund — State snowmobile search and rescue fund.

67-7107. County advisory committee.

67-7108. Prohibition against numbering by political subdivisions.

67-7109. Prohibition against highway operation — Exceptions.

67-7110. Restrictions.

67-7111. Accident resulting in personal injuries or property damage.

67-7112. Groomed snowmobile trails.

67-7113. Violations — Accountable for property damage.

67-7114. Operation under the influence of alcohol, drugs or any other intoxicating substance.

67-7115. Winter recreational parking permit — Fee — Fines — Permits for snowmobile owners — Exemptions.

67-7116. Printing, distribution and sale of winter recreational parking permits.

67-7117. Cross-country skiing recreation account.

67-7118. Distribution of fees.

67-7119. Cross-country skiing advisory committees. [Repealed.]

67-7120, 67-7121. [Reserved.]

67-7122. Application for certificate of number — Attachment of validation stickers — Certificate — Fees.

67-7123. Transfer of number certificates and restricted vehicle license plate.

67-7124. Off-highway vehicles — Nonresident — Off-highway vehicle user certificate required.

67-7125. Noise abatement.

67-7126. Establishment of account — Distribution of fees.

67-7127. Use of moneys in account.

67-7128. Off-road motor vehicle advisory committee — Creation — Selection — Term of office — Duty.

67-7129. Penalties. [Repealed.]

67-7130, 67-7131. [Reserved.]

67-7132. Rules and regulations.

67-7133. Responsibility for enforcement.

§ 67-7101. Definitions. — In this chapter:

(1) “All-terrain vehicle” or “ATV” means any recreational motor vehicle designed for or capable of traveling off developed roadways and highways with three (3) or more tires and fifty-five (55) inches or less in width, with a wheelbase of sixty-one (61) inches or less, and with handlebar steering and a seat designed to be straddled by the operator.

(2) “Board” means the park and recreation board created under authority of [section 67-4221, Idaho Code](#).

(3) “Bona fide snowmobile program” means services or facilities as approved by the department that will benefit snowmobilers such as snowmobile trail grooming, plowing and maintaining snowmobile parking areas and facilities, and trail signing.

(4) “Dealer” means any person who engages in the retail sales of or rental of snowmobiles, motorbikes, utility type vehicles or all-terrain vehicles.

(5) “Department” means the Idaho department of parks and recreation.

(6) “Designated parking area” means an area located, constructed, maintained, and signed with the approval of the land manager or owner.

(7) “Director” means the director of the department of parks and recreation.

(8) “Highway.” (See [section 40-109, Idaho Code](#), but excepting public roadway as defined in this section)

(9) “Motorbike” means any self-propelled two (2) wheeled motorcycle or motor-driven cycle, excluding tractors, designed for or capable of traveling off developed roadways and highways and also referred to as trailbikes, enduro bikes, trials bikes, motocross bikes or dual purpose motorcycles.

(10) “Off-highway vehicle” means an all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle as defined in this section.

(11) “Operator” means any person who is in physical control of a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway

vehicle or snowmobile.

(12) “Owner” means every person holding record title to a motorbike, all-terrain vehicle, utility type vehicle, specialty off-highway vehicle or snowmobile and entitled to the use or possession thereof, other than a lienholder or other person having a security interest only.

(13) “Person” means an individual, partnership, association, corporation, or any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(14) “Public roadway” means all portions of any highway controlled by an authority other than the Idaho transportation department.

(15) “Snowmobile” means any self-propelled vehicle under two thousand (2,000) pounds unladen gross weight, designed primarily for travel on snow or ice or over natural terrain, which may be steered by tracks, skis, or runners.

(16) “Specialty off-highway vehicle” means any vehicle manufactured, designed or constructed exclusively for off-highway operation that does not fit the definition of an all-terrain vehicle, utility type vehicle or motorbike as defined in this section. The vehicle classification provided for in this subsection shall become effective on January 1, 2010.

(17) “Utility type vehicle” or “UTV” means any recreational motor vehicle other than an ATV, motorbike or snowmobile as defined in this section, designed for and capable of travel over designated roads, traveling on four (4) or more tires, maximum width less than eighty (80) inches, and having a wheelbase of one hundred ten (110) inches or less. A utility type vehicle must have a minimum width of fifty (50) inches, a minimum weight of at least nine hundred (900) pounds or a wheelbase of over sixty-one (61) inches. Utility type vehicle does not include golf carts, vehicles specially designed to carry a disabled person, implements of husbandry as defined in [section 49-110\(2\), Idaho Code](#), or vehicles otherwise registered under title 49, Idaho Code. A “utility type vehicle” or “UTV” also means a recreational off-highway vehicle or ROV.

(18) “Vendor” means any entity authorized by the department to sell recreational certificates of number.

(19) “Winter recreational parking locations” means designated parking areas established and maintained with funds acquired from the cross-country skiing recreation account.

History.

1969, ch. 338, § 3, p. 1061; am. 1982, ch. 95, § 118, p. 185; 1983, ch. 239, § 1, p. 644; am. 1986, ch. 323, § 1, p. 790; am. and redesign. 1988, ch. 265, § 532, p. 549; am. 1989, ch. 106, § 1, p. 238; am. 1990, ch. 391, § 4, p. 1092; am. 2003, ch. 87, § 3, p. 265; am. 2006, ch. 42, § 1, p. 122; am. 2007, ch. 117, § 1, p. 361; am. 2008, ch. 409, § 10, p. 1136; am. 2009, ch. 157, § 11, p. 458; am. 2011, ch. 158, § 3, p. 443; am. 2014, ch. 38, § 21, p. 66; am. 2014, ch. 242, § 1, p. 610; am. 2014, ch. 338, § 3, p. 838; am. 2019, ch. 71, § 1, p. 167; am. 2019, ch. 77, § 1, p. 180.

STATUTORY NOTES

Cross References.

Department of parks and recreation, § 67-4218.

Amendments.

The 2006 amendment, by ch. 42, added present subsection (15) and redesignated former subsections (15) and (16) as (16) and (17).

The 2007 amendment, by ch. 117, deleted “and which is not otherwise registered or licensed under the laws of the state of Idaho” from the end of subsection (14).

The 2008 amendment, by ch. 409, in subsection (1), substituted “nine hundred (900) pounds and fifty (50) inches” for “eight hundred fifty (850) pounds and forty-eight (48) inches” and added “has handlebar steering and a seat designed to be straddled by the operator.”

The 2009 amendment, by ch. 157, in subsection (1), deleted “traveling on low pressure tires of ten (10) psi or less” preceding “has handlebar steering”; in subsection (4), inserted “utility type vehicles”; added subsections (10) and (16) and redesignated the other subsections accordingly; in subsections (11) and (12), inserted “utility type vehicle, specialty off-highway vehicle”; and rewrote present subsection (17), adding the second sentence.

The 2011 amendment, by ch. 158, added the last sentence in subsection (17).

This section was amended by three 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 38, substituted “recreational motor vehicle designed for or capable of traveling off developed roadways and highways” for “recreation vehicle” in subsection (1).

The 2014 amendment, by ch. 242, substituted “two thousand (2,000) pounds” for “one thousand (1,000) pounds” in subsection (15).

The 2014 amendment, by ch. 338, substituted “certificates of number” for “registrations” at the end of subsection (18).

This section was amended by two 2019 acts which appear to be compatible and have been compiled together.

The 2019 amendment, by ch. 71, substituted “fifty-five (55) inches” for “fifty (50) inches” near the middle of subsection (1); and substituted “eighty (80) inches” for “seventy-four (74) inches, maximum weight less than two thousand (2,000) pounds” near the end of the first sentence in subsection (17).

The 2019 amendment, by ch. 77, deleted “maximum weight less than two thousand (2,000) pounds” following “seventy-four (74) inches” near the end of the first sentence in subsection (17) and inserted “recreation” near the end of subsection (19).

Compiler’s Notes.

This section was formerly compiled as § 49-2603.

The words enclosed in parentheses so appeared in the law as enacted.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is

declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

Section 2 of S.L. 2019, ch. 77 declared an emergency. Approved March 12, 2019.

CASE NOTES

Snowmobiles.

Since a snowmobile is a specific type of motor vehicle, permitted under certain circumstances to be operated on highways or roadways, it should be treated as a motor vehicle for purposes of the application of § 18-8004. *State v. Barnes*, 133 Idaho 378, 987 P.2d 290 (1999).

§ 67-7102. Requirement that snowmobile be numbered. — Except as otherwise provided, no snowmobile shall be operated within the jurisdiction of the state of Idaho unless numbered as provided in this chapter.

History.

1969, ch. 338, § 4, p. 1061; am. and redesign. 1988, ch. 265, § 533, p. 549.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 49-2604.

§ 67-7103. Application for number — Attachment of validation stickers — Certificate — Application for transfer of certificate — Transfer of certificate fee — Temporary number — Fees. —

(1) On or before November 1 of each year the owner of each snowmobile requiring numbering by the state of Idaho shall file an application for number with the department on forms approved by it. The application shall be signed by the owner and shall, except as provided in subsection (7) of this section, be accompanied by a fee of thirty-one dollars (\$31.00). Upon receipt of the application the department shall issue to the applicant a certificate of number stating the number assigned to the snowmobile and the name and address of the owner. The owner shall attach to the snowmobile the validation sticker in a manner as may be prescribed by rules of the department. The validation sticker shall be located on the right and left side of the cowl of the snowmobile and shall be completely visible and shall be maintained in legible condition. The certificate of number shall be pocket size and shall be available at all times for inspection on the snowmobile for which issued, wherever the snowmobile is in operation.

(2) The department may issue any certificate of number directly or may authorize any persons to act as vendor for the issuance. In the event a person accepts the authorization, he may be assigned a block of validation stickers and certificates of number which upon issue, in conformity with this chapter and with any rules of the department, shall be valid as if issued directly by the department.

(3) All records of the department made or kept pursuant to this section shall be public records.

(4) Each snowmobile must be numbered before it leaves the premises at the time of sale from any retail snowmobile dealer.

(5) The purchaser of a snowmobile shall, within fifteen (15) days immediately after acquisition, make application to the department for transfer to him of the certificate of number issued to the snowmobile, giving his name, address and the number of the snowmobile and shall at the same time pay to the department a fee of three dollars (\$3.00). Upon receipt of the application and fee, the department shall transfer the certificate of

number issued for the snowmobile to the new owner or owners. Unless the application is made and fee paid within fifteen (15) days, the snowmobile shall be considered to be without a certificate of number and it shall be unlawful for any person to operate that snowmobile until the certificate is issued.

(6) No number other than the validation stickers issued to a snowmobile pursuant to this chapter shall be painted, attached, or otherwise displayed on the snowmobile, except a temporary number may be attached to identify a snowmobile for the purpose of racing or other sporting events.

(7) Resident and nonresident owners of snowmobiles used for rental purposes shall purchase validation stickers for sixty-one dollars (\$61.00) and the validation stickers shall be displayed on the machine at all times.

History.

1969, ch. 338, § 5, p. 1061; am. 1986, ch. 323, § 2, p. 790; am. and redesign. 1988, ch. 265, § 543, p. 549; am. 1989, ch. 106, § 2, p. 238; am. 1992, ch. 178, § 1, p. 562; am. 1998, ch. 343, § 1, p. 1093; am. 2003, ch. 258, § 1, p. 680; am. 2005, ch. 141, § 2, p. 434; am. 2007, ch. 117, § 2, p. 361; am. 2014, ch. 338, § 4, p. 838.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 117, in the second sentence in subsection (1), substituted “thirty-one dollars (\$31.00)” for “twenty-one dollars (\$21.00)”; and in subsection (7), substituted “sixty-one dollars (\$61.00)” for “fifty-one dollars (\$51.00).”

The 2014 amendment, by ch. 338, substituted “validation stickers” for “number” or “certificates of number” in the section heading and throughout the text.

Compiler’s Notes.

This section was formerly compiled as § 49-2605.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules

necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-7104. Nonresident snowmobile user certificate required. — The owner of a nonresident, noncommercial snowmobile shall not be required to comply with the certificate of numbering requirements of the state of Idaho, but shall be required to obtain a nonresident snowmobile user certificate. A fee of thirty-one dollars (\$31.00) shall be imposed for the issuance of a nonresident snowmobile user certificate. The validation stickers shall be displayed in the same manner as provided in section 67-7103, Idaho Code. Nonresident snowmobile user certificates shall be valid beginning November 1 through October 31 of the following year. Issuance and administration of nonresident snowmobile user certificates shall be conducted in the same manner as provided in section 67-7103, Idaho Code, for numbering of snowmobiles.

(1) For purposes of this section, “nonresident” shall be as defined in [section 36-202, Idaho Code](#).

(2) In the absence of a bona fide program in the area or upon the request of the bona fide county snowmobile advisory committee of the nearest affected county in Idaho, the requirements for the nonresident snowmobile user certificate may be waived by the parks and recreation board [park and recreation board] on specific trails where the snowmobile trail grooming is solely supported by a state other than Idaho.

History.

1969, ch. 338, § 6, p. 1061; am. and redesign. 1988, ch. 265, § 535, p. 549; am. 1998, ch. 342, § 1, p. 1093; am. 1999, ch. 368, § 1, p. 974; am. 2003, ch. 258, § 2, p. 680; am. 2005, ch. 141, § 3, p. 434; am. 2007, ch. 117, § 3, p. 361; am. 2014, ch. 338, § 5, p. 838.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 117, substituted “thirty-one dollars (\$31.00)” for “twenty-one dollars (\$21.00)” in the introductory paragraph.

The 2014 amendment, by ch. 338, in the introductory paragraph, substituted “certificate of numbering” for “registration” in the first sentence, substituted “validation stickers” for “certificate of number” in the third sentence, and substituted “Nonresident snowmobile user certificates” for “Such certificate” at the beginning of the fourth sentence; and inserted “snowmobile user” near the middle of subsection (2).

Compiler’s Notes.

This section was formerly compiled as § 49-2606.

The bracketed insertion in subsection (2) was added by the compiler to correct the name of the referenced agency. See § 67-4221.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-7105. Government ownership. — Certificate of number and registration portions of this chapter shall not apply to snowmobiles, all-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes owned and operated by the federal government, a state government or a subdivision of it.

History.

1969, ch. 338, § 7, p. 1061; am. and redesign. 1988, ch. 265, § 536, p. 549; am. 2009, ch. 157, § 12, p. 458.

STATUTORY NOTES

Amendments.

The 2009 amendment, by ch. 157, inserted “all-terrain vehicles, utility type vehicles, specialty off-highway vehicles and motorbikes.”

Compiler’s Notes.

This section was formerly compiled as § 49-2607.

Effective Dates.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

§ 67-7106. Distribution of moneys collected — County snowmobile fund — State snowmobile fund — State snowmobile search and rescue fund. — (1) Each vendor shall not later than the fifteenth day of each month remit all moneys collected under the provisions of sections 67-7103 and 67-7104, Idaho Code, to the state treasurer for credit to the state snowmobile fund, established in the dedicated fund, to be administered by the director, except that one dollar (\$1.00) from each snowmobile certificate of number fee, one dollar (\$1.00) from each rental certificate of number fee, and one dollar (\$1.00) from each nonresident snowmobile user certificate issued by the vendor shall be credited by the state treasurer to the state snowmobile search and rescue fund created in section 67-2913A, Idaho Code.

(2) Each county with a bona fide snowmobile program shall be entitled to receive from the department eighty-five percent (85%) of the moneys generated for that county during that certificate of number period. Counties with a bona fide snowmobile program may use up to fifteen percent (15%) of their county snowmobile moneys upon recommendation by their county snowmobile advisory committee for snowmobile law enforcement purposes.

(3) Up to fifteen percent (15%) of the revenue generated from snowmobile certificates of number each year may be used by the department to defray administrative costs. Any moneys unused at the end of the fiscal year shall be returned to the state treasurer for deposit in the state snowmobile fund.

(4) Vendors shall be entitled to charge an additional one dollar and fifty cents (\$1.50) handling fee per certificate of number for the distribution of certificates of number. Handling fees collected by the department shall be deposited to the state snowmobile fund.

(5) For those certificates of number not designated to a bona fide county snowmobile program, the moneys generated shall be deposited to the state snowmobile fund, and such fund shall be available to the department for snowmobile-related expenses.

History.

I.C., § 49-2608, as added by 1983, ch. 239, § 3, p. 644; am. 1986, ch. 323, § 3, p. 790; am. and redesain. 1988, ch. 265, § 537, p. 549; am. 1989, ch. 106, § 3, p. 238; am. 1992, ch. 178, § 2, p. 562; am. 2005, ch. 141, § 4, p. 434; am. 2007, ch. 117, § 4, p. 361; am. 2014, ch. 338, § 6, p. 838.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Amendments.

The 2007 amendment, by ch. 117, deleted the former second and third sentences in subsection (2), which read: “Application for additional funds shall be made to the department by each county prior to the second Monday of August of each year. The moneys applied for shall be used solely for a bona fide snowmobile program”; in subsection (3), substituted “revenue generated from snowmobile registrations each year” for “statewide snowmobile fund generated each year”; added the last sentence in subsection (4); and rewrote subsection (5), which formerly read: “Counties which have not established a bona fide snowmobile program shall remit the entire balance in the county snowmobile fund to the state treasurer for credit to the state snowmobile fund, and shall be available to counties with a bona fide snowmobile program. Application for these moneys shall be made prior to the second Monday of August of that registration period.”

The 2014 amendment, by ch. 338, substituted “certificate of number” for “registration” and similar language throughout the section.

Compiler’s Notes.

This section was formerly compiled as § 49-2608.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this

act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

OPINIONS OF ATTORNEY GENERAL

Vendor Fees.

The fees described in this section and §§ 67-7013, 67-7014, 67-7118 and 67-7126 are two different types: “Vendor” or “handling” fees (hereafter referred to in the collective as vendor fees), which the Idaho department of parks and recreation (IDPR) collects when it acts as a vendor of recreational registrations, and administrative funds which are allocated to IDPR as a percentage of recreational registration revenue. Vendor fees should be used to offset expenses attributable to the department’s registration functions. Excess vendor fees may be expended at the agency’s discretion. Administrative funds may be expended to cover the direct costs of administering the respective recreational programs, and may, in addition, be used to cover a proportionate share of general administrative costs. OAG 96-4.

§ 67-7107. County advisory committee. — The county commissioners of any county may appoint snowmobile advisory committees to serve without salaries and wages in an advisory capacity relating to the establishment and maintenance of parking and unloading areas on public and private property, and the expenditure of moneys deposited in the county snowmobile fund; and to serve at the pleasure of the county commissioners. The persons selected shall be active snowmobilers representing snowmobile clubs, organizations, or merchants engaged in the sale or rental of snowmobiles, or be a member of the general public actively engaged in the sport of snowmobiling.

The board of county commissioners is hereby authorized, upon advisement of the special advisory committee, to use and expend the special fund created in [section 67-7106, Idaho Code](#), outside the county.

History.

[I.C., § 49-2608A](#), as added by 1971, ch. 256, § 1, p. 1031; am. and redesisg. 1988, ch. 265, § 538, p. 549; am. 1992, ch. 178, § 3, p. 562.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 49-2608A.

§ 67-7108. Prohibition against numbering by political subdivisions.

— The provisions of this chapter shall govern the numbering and registration of snowmobiles, all-terrain vehicles, motorbikes, specialty off-highway vehicles and utility type vehicles operated in this state. All political subdivisions of the state are expressly prohibited from numbering or registering snowmobiles, all-terrain vehicles, motorbikes, specialty off-highway vehicles and utility type vehicles in any respect.

History.

1969, ch. 338, § 9, p. 1061; am. and redesign. 1988, ch. 265, § 539, p. 549; am. 2014, ch. 338, § 7, p. 838.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 338, inserted “all-terrain vehicles, motorbikes, specialty off-highway vehicles and utility type vehicles” twice.

Compiler’s Notes.

This section was formerly compiled as § 49-2609.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-7109. Prohibition against highway operation — Exceptions. —

No person shall operate a snowmobile upon any highway or public roadway in this state, with the following exceptions:

(1) Properly numbered snowmobiles may cross, as directly as possible after a full and complete stop, highways and public roadways, except controlled access highways, provided that the crossing can be made in safety and that it does not interfere with the free movement of vehicular traffic approaching from either direction on the highway or public roadway. It shall be the responsibility of the operator of the snowmobile to yield the right-of-way to all vehicular traffic upon any highway or public roadway before crossing.

(2) Loading or unloading shall be done without causing a hazard to vehicular traffic approaching from either direction on a highway or public roadway. Loading or unloading shall be accomplished with regard to safety, at the nearest possible point to the area of operation.

(3) The prohibition against operating snowmobiles upon highways and public roadways shall not apply to any highway or public roadway drifted or covered with snow to an extent that travel on it by other motor vehicles is impractical or impossible.

(4) Snowmobiles may be operated on that portion of a highway or public roadway right-of-way that is not maintained or utilized for the operation of conventional motor vehicles.

(5) Local authorities may, by ordinance, specifically designate public roadways upon which snowmobiles may be operated.

History.

1969, ch. 338, § 10, p. 1061; am. and redesign. 1988, ch. 265, § 540, p. 549.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 49-2610.

CASE NOTES

Snowmobiles.

Since a snowmobile is a specific type of motor vehicle, permitted under certain circumstances to be operated on highways or roadways, it should be treated as a motor vehicle for purposes of the application of § 18-8004. *State v. Barnes*, 133 Idaho 378, 987 P.2d 290 (1999).

§ 67-7110. Restrictions. — It shall be unlawful for any person to drive or operate any snowmobile:

(1) At a rate of speed greater than reasonable and prudent under the existing conditions.

(2) In a negligent manner so as to endanger the person or property of another, or to cause injury or damage to either, or to harass, chase or annoy any wild game animals or birds or domestic animals.

(3) Without a lighted headlight and taillight between the hours of dusk and dawn, or when upon or crossing any public roadway or highway, or when otherwise required for the safety of others.

(4) Without an adequate braking device which may be operated by either hand or foot.

(5) Without an adequate muffler, except when used in conjunction with public racing events.

(6) Upon a public roadway or highway without a valid motor vehicle operator's license, unless the public roadway or highway is closed to other motor vehicle travel.

History.

1969, ch. 338, § 11, p. 1061; am. and redesign. 1988, ch. 265, § 541, p. 549; am. 1999, ch. 359, § 1, p. 950.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 49-2611.

CASE NOTES

[Construction with other statutes.](#)

[Duty to exercise reasonable care.](#)

Effect of amendments.

Construction with Other Statutes.

Because the defendant elected to operate her snowmobile on a public roadway while intoxicated, her actions came within the purview of both subsection (2) of this section and § 18-8004(1)(a), and the prosecutor had the discretion to charge her under either statute. *State v. Barnes*, 133 Idaho 378, 987 P.2d 290 (1999).

Duty to Exercise Reasonable Care.

Testimony that an employee of the defendant was driving a snowmachine in excess of the critical speed of a curve sufficiently supported the district judge's finding that he breached his duty to exercise reasonable care. *Hanks v. Sawtelle Rentals, Inc.*, 133 Idaho 199, 984 P.2d 122 (1999).

Effect of Amendments.

The 1999 statutory amendment providing that the operation of a snowmobile or all terrain vehicle under the influence of intoxicating substances on a public roadway would be a misdemeanor was intended to clarify and strengthen the existing statute and did not mean that the defendant was improperly charged under § 18-8004. *State v. Barnes*, 133 Idaho 378, 987 P.2d 290 (1999).

§ 67-7111. Accident resulting in personal injuries or property damage. — The operator of any snowmobile involved in any accident resulting in injuries to or death to any person or property damage in the estimated amount of two hundred dollars (\$200) or more, or a person acting for the operator, or the owner of the snowmobile having knowledge of the accident should the operator of the snowmobile be unknown, shall immediately notify a proper law enforcement agency of the facts relating to the accident and within five (5) days file a report of the circumstances with the department on forms prescribed by the department. For any accident occurring on a highway or public roadway the owner, the operator, or both shall be subject to the provisions of section 49-2417, Idaho Code.

History.

1969, ch. 338, § 13, p. 1061; am. 1986, ch. 323, § 4, p. 790; am. and redesign. 1988, ch. 265, § 542, p. 549.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 49-2613.

§ 67-7112. Groomed snowmobile trails. — Counties shall have the option to allow all-terrain vehicles and snowmobiles over one thousand (1,000) pounds unladen gross weight, if numbered as a snowmobile, to use snowmobile trails in the county. No other vehicles shall operate on groomed snowmobile trails unless specifically allowed by the county. Any all-terrain vehicle and snowmobile over one thousand (1,000) pounds unladen gross weight operating on groomed snowmobile trails during the winter snowmobiling season when the trails are groomed shall be numbered as a snowmobile under the provisions of section 67-7103, Idaho Code. Violation of the provisions of this section shall be an infraction.

History.

I.C., § 49-2616, as added by 1986, ch. 323, § 5, p. 790; am. and redesign. 1988, ch. 265, § 543, p. 549; am. 1989, ch. 106, § 4, p. 238; am. 2009, ch. 138, § 1, p. 420; am. 2014, ch. 242, § 2, p. 610; am. 2014, ch. 338, § 8, p. 838.

STATUTORY NOTES

Cross References.

Penalty for infraction, § 18-113A.

Amendments.

The 2009 amendment, by ch. 138, added the last two sentences.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 242, rewrote the section, which formerly read: “Any all-terrain vehicle operating on groomed snowmobile trails during the winter snowmobiling season when the trails are groomed shall be registered as a snowmobile under the provisions of [section 67-7103, Idaho Code](#). Counties shall have the option to allow all-terrain vehicles, if registered, to use snowmobile trails in the county. No other vehicles shall operate on groomed snowmobile trails unless specifically allowed by the county. Violation of the provisions of this section shall be an infraction.”

The 2014 amendment, by ch. 338, substituted “numbered” for “registered” in the current first and third sentences.

Compiler’s Notes.

This section was formerly compiled as § 49-2616.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-7113. Violations — Accountable for property damage. — (1) Unless otherwise provided in this chapter, any person who violates any provision of this chapter, or any rule promulgated by the department pursuant to this chapter, shall be guilty of an infraction and shall be punished by a fine of one hundred dollars (\$100).

(2) In addition thereto, the operator and/or owner of the snowmobile shall be responsible and held accountable to the owner of any lands where trees, shrubs or other property have been damaged as the result of travel over their premises.

History.

I.C., § 67-7113, as added by 1989, ch. 106, § 5, p. 238; am. 1992, ch. 178, § 4, p. 562; am. 2014, ch. 338, § 9, p. 838; am. 2016, ch. 120, § 1, p. 352.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 338, deleted the “(1)” designation and, in the first sentence, substituted “fifty dollars (\$50.00)” for “ten dollars (\$10.00)”.

The 2016 amendment, by ch. 120, rewrote the section, which formerly read: “Any person who violates any provision of **sections 67-7102 through 67-7112, Idaho Code**, shall be guilty of an infraction, and shall be punished by a fine of not less than fifty dollars (\$ 50.00) nor more than one hundred dollars (\$ 100). In addition thereto, the operator and/or owner of the snowmobile shall be responsible and held accountable to the owner of any lands where trees, shrubs or other property have been damaged as the result of travel over their premises.”

Compiler’s Notes.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

§ 67-7114. Operation under the influence of alcohol, drugs or any other intoxicating substance. — Any person driving or operating a snowmobile, motorbike, utility type vehicle, specialty off-highway vehicle or all-terrain vehicle under the influence of alcohol, drugs or any other intoxicating substance on a public roadway or highway or off-highway shall be guilty of a misdemeanor.

History.

I.C., § 67-7114, as added by 1999, ch. 359, § 2, p. 950; am. 2008, ch. 409, § 11, p. 1137; am. 2009, ch. 157, § 13, p. 458.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor where none prescribed, § 18-113.

Amendments.

The 2008 amendment, by ch. 409, inserted “motorbike, utility type vehicle” and “or in section 49-426(3) and (4), Idaho Code.”

The 2009 amendment, by ch. 157, inserted “specialty off-highway vehicle,” deleted “as authorized in this chapter or in section 49-426(3) and (4), Idaho Code” following “public roadway or highway,” and substituted “off-highway” for “off-road” near the end.

Effective Dates.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

CASE NOTES

DUI Charges.

This section does not bar the state from charging a defendant with driving under the influence under § 18-8004. The statutes are harmonious, though different in specific respects. This section is specific as to types of vehicles

driven by those charged with DUI, while § 18-8004 is specific as to where the vehicle was operated and what constitutes intoxication. *State v. Trusdall*, 155 Idaho 965, 318 P.3d 955 (Ct. App. 2014).

§ 67-7115. Winter recreational parking permit — Fee — Fines — Permits for snowmobile owners — Exemptions. — (1) Except as hereinafter provided, no person shall, from November 15 of any year to April 30 of the next year, park a vehicle in a winter recreational parking location unless the vehicle displays an annual or temporary parking permit. The annual permit shall be permanently affixed and the temporary permit shall be temporarily affixed on the front window of the vehicle nearest the driver's seat in such a manner that they are completely visible and shall be kept in a legible condition at all times.

(2) The fee for the annual permit and the temporary permit shall be set by the board, but shall not exceed thirty dollars (\$30.00) for the annual permit or ten dollars (\$10.00) for the temporary permit.

(3) The owner of any vehicle, as defined in chapter 1, title 49, Idaho Code, that violates the provisions of subsection (1) of this section has committed an infraction punishable as provided under [section 18-113A, Idaho Code](#), and shall be punished with a fine of not less than twenty dollars (\$20.00) or more than fifty dollars (\$50.00). The fact that a motor vehicle which is illegally parked under the provisions of this chapter is registered or leased in the name of a person shall be considered prima facie evidence that the person was in control of the vehicle at the time of parking.

(4) Snowmobile owners, when snowmobiling, shall be allowed to park their transportation vehicles in a designated winter recreational parking area without displaying a parking permit.

(5) No parking permit shall be required under the provisions of this section for a vehicle owned and operated by the United States, any state or a political subdivision of a state, or a vehicle registered in another state, if that vehicle displays a similar cross-country skiing permit, but only to the extent that an exception or privilege is granted under the laws of that state for permit holders from this state.

History.

[I.C., § 49-3104](#), as added by 1979, ch. 103, § 1, p. 247; am. 1981, ch. 257, § 1, p. 548; am. 1983, ch. 3, § 2, p. 4; am. 1985, ch. 52, § 1, p. 102;

am. 1987, ch. 181, § 1, p. 358; am. and redesign. 1988, ch. 265, § 544, p. 549; am. 1989, ch. 106, § 6, p. 238; am. 1992, ch. 244, § 1, p. 721.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 49-3104.

§ 67-7116. Printing, distribution and sale of winter recreational parking permits. — (1) The department shall print the parking permits and shall supervise the sale of the permits throughout the state.

(2) The department shall distribute and sell the permits directly or may authorize vendors under agreement according to rules and regulations of the department. The department may require that the authorized vendors shall be bonded in accordance with rules and regulations of the department. Authorized vendors will receive a stipulated commission for each permit sold.

History.

I.C., § 49-3105, as added by 1979, ch. 103, § 1, p. 247; am. 1983, ch. 3, § 3, p. 4; am. 1985, ch. 52, § 2, p. 102; am. and redesisg. 1988, ch. 265, § 545, p. 549; am. 1989, ch. 106, § 7, p. 238.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 49-3105.

§ 67-7117. Cross-country skiing recreation account. — There is established in the state treasury an account to be known as the “cross-country skiing recreation account,” into which the money specified in section 67-7118, Idaho Code, shall be deposited. The board is charged with the administration of the account for the purposes specified in section 67-7118(3), Idaho Code. All claims against the account shall be examined, audited and allowed in the same manner now or hereafter provided by law for claims against the state, except that the board is empowered to enter into agreements with the counties for the disbursement of funds to them on a project by project basis.

History.

I.C., § 49-3106, as added by 1979, ch. 103, § 1, p. 247; am. and redesign. 1988, ch. 265, § 546, p. 549.

STATUTORY NOTES

Compiler’s Notes.

This section was formerly compiled as § 49-3106.

§ 67-7118. Distribution of fees. — The moneys collected by or for the board on the sale of each winter recreational parking permit shall be allocated as follows:

(1) The authorized vendor shall be entitled to receive a commission of one dollar (\$1.00) on each permit sold, which sum may be retained as compensation for the sale of the permit.

(2) Fifteen per cent (15%) shall be allotted to the department for the production of the parking permits and necessary administration expenses incurred by the department in carrying out the provisions of [section 67-7115\(3\), Idaho Code](#), which moneys shall be placed in the park and recreation account.

(3) The balance shall be transmitted to the state treasurer for deposit to the credit of the cross-country skiing recreation account to be appropriated first for the reimbursement for costs incurred in the removal of snow from winter recreation parking locations. Any remaining monies may be appropriated to provide grants to public or nonprofit entities for the acquisition, lease, development and maintenance of sanitation facilities, trail marking and other facilities designed to promote the health and safety of persons engaged in cross-country skiing.

History.

[I.C., § 49-3107](#), as added by 1979, ch. 103, § 1, p. 247; am. 1983, ch. 3, § 4, p. 4; am. 1987, ch. 181, § 2, p. 358; am. and redesign. 1988, ch. 265, § 547, p. 549; am. 1989, ch. 106, § 8, p. 238.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

This section was formerly compiled as § 49-3107.

OPINIONS OF ATTORNEY GENERAL

Vendor Fees.

The fees described in this section and §§ 67-7013, 67-7014, 67-7106, and 67-7126 are two different types: “Vendor” or “handling” fees (hereafter referred to in the collective as vendor fees), which the Idaho department of parks and recreation (IDPR) collects when it acts as a vendor of recreational registrations, and administrative funds which are allocated to IDPR as a percentage of recreational registration revenue. Vendor fees should be used to offset expenses attributable to the department’s registration functions. Excess vendor fees may be expended at the agency’s discretion. Administrative funds may be expended to cover the direct costs of administering the respective recreational programs, and may, in addition, be used to cover a proportionate share of general administrative costs. OAG 96-4.

§ 67-7119. Cross-country skiing advisory committees. [Repealed.]

Repealed by S.L. 2013, ch. 29, § 1, effective July 1, 2013.

History.

I.C., § 49-3108, as added by 1979, ch. 103, § 1, p. 247; am. and redesign. 1988, ch. 265, § 548, p. 549; am. 1989, ch. 106, § 9, p. 238.

§ 67-7120, 67-7121. [Reserved.]

§ 67-7122. Application for certificate of number — Attachment of validation stickers — Certificate — Fees. — (1) On or before January 1 of each year, the owner of any all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle as defined in section 67-7101, Idaho Code, or any motorcycle as defined in section 49-114, Idaho Code, used off public highways, on highways located on state lands or federal lands which are not part of the highway system of the state of Idaho or on highways as prescribed in section 49-426(3) and (4), Idaho Code, but excluding those vehicles used exclusively on private land for agricultural use or used exclusively for snow removal purposes as provided in section 49-426(2), Idaho Code, shall obtain a number certificate for that vehicle at any vendor authorized by the department. Effective January 1, 2010, a fee of twelve dollars (\$12.00) shall be charged for each number certificate, which fee includes a one dollar and fifty cent (\$1.50) fee to be retained by the vendor and the remainder of which shall be remitted to the department together with information noting the number of the certificate issued, the identity of the owner that purchased the number certificate, the owner's designated county use area and the type of machine to which the owner will affix the certificate of number, e.g., motorbike, all-terrain vehicle, utility type vehicle or specialty off-highway vehicle. The foregoing shall not prohibit the department from collecting such further information as it may deem necessary or helpful to its administrative duties under this chapter.

(2) At the time of sale from any dealer, each motorbike, all-terrain vehicle or utility type vehicle sold to an Idaho resident, but excluding those vehicles to be used exclusively on private land for agricultural use or used exclusively for snow removal purposes as provided in [section 49-426\(2\), Idaho Code](#), must obtain a number certificate.

(a) Application blanks and validation stickers shall be supplied by the department and the validation sticker shall be issued to the person making application for number certificate.

(b) All number certificates that are issued shall be in force through December 31 of the issued year. All number certificates shall be renewed by the owner of the all-terrain vehicle, motorbike, specialty off-highway vehicle or utility type vehicle in the same manner provided for in the initial securing of the same or with any vendor authorized by the department. A vendor issuing a renewal number certificate shall retain a one dollar and fifty cent (\$1.50) vendor fee and remit the remainder of the twelve dollar (\$12.00) renewal number certificate fee to the department together with information noting the number of the certificate issued, the identity of the owner that purchased the number certificate, the owner's designated county use area, and the type of machine to which the owner will affix the validation stickers, e.g., motorbike, all-terrain vehicle, utility type vehicle or specialty off-highway vehicle. The foregoing shall not prohibit the department from collecting such additional information as it may deem necessary or helpful to its administrative duties under this chapter.

(c) The issued validation sticker shall be placed upon the restricted vehicle license plate of the all-terrain vehicle, motorbike or utility type vehicle, or upon the right fork of a vehicle registered pursuant to [section 49-402\(3\), Idaho Code](#), or of a motorbike if used exclusively off-highway, or upon the rear fender of an all-terrain vehicle, specialty off-highway vehicle or utility type vehicle if used exclusively off-highway. The placement shall be made in such a manner that it is completely visible, does not cover the license plate numbers or letters, if licensed, and shall be kept in a legible condition at all times.

(3) For operation of a motorbike that meets the requirements specified in [section 49-114\(10\), Idaho Code](#), on the public highways, the vehicle shall also be registered pursuant to the provisions of [section 49-402\(3\), Idaho Code](#). A motorbike that meets the requirements specified in [section 49-114\(10\), Idaho Code](#), and that is registered pursuant to [section 49-402\(3\), Idaho Code](#), shall not be required to obtain a restricted license plate pursuant to [section 49-402\(4\), Idaho Code](#). A motorbike, all-terrain vehicle, specialty off-highway vehicle or utility type vehicle operated exclusively off-highway or on highways located on state lands or federal lands which are not part of the highway system of the state of Idaho and that meet the registration requirements specified in this section shall not be required to

obtain a restricted vehicle license plate pursuant to [section 49-402\(4\), Idaho Code](#).

(4) Nonresidents shall be allowed to purchase a restricted vehicle license plate pursuant to [section 49-402\(4\), Idaho Code](#), and/or a number certificate for an all-terrain vehicle, motorbike or utility type vehicle.

History.

[I.C., § 49-2707](#), as added by 1972, ch. 278, § 1, p. 684; am. 1982, ch. 95, § 121, p. 185; am. and redesign. 1986, ch. 233, § 2, p. 641; redesign. and am. 1988, ch. 265, § 549, p. 549; am. 1989, ch. 106, § 10, p. 238; am. 1990, ch. 391, § 5, p. 1092; am. 1992, ch. 238, § 3, p. 707; am. 1994, ch. 288, § 1, p. 907; am. 2000, ch. 315, § 4, p. 1059; am. 2006, ch. 42, § 2, p. 122; am. 2008, ch. 409, § 12, p. 1138; am. 2009, ch. 157, § 14, p. 458; am. 2014, ch. 338, § 10, p. 838.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 42, in subsection (1), inserted “or utility type vehicle” four times and substituted “motorbike, ATV or UTV” for “motorbike/ATV.”

The 2008 amendment, by ch. 409, rewrote the section to the extent that a detailed comparison is impracticable.

The 2009 amendment, by ch. 157, rewrote subsections (1) and (2) to the extent a detailed comparison is impracticable; and added the last sentence in subsection (3).

The 2014 amendment, by ch. 338, rewrote the section heading and the section to the extent that a detailed comparison is impracticable.

Compiler’s Notes.

This section was formerly compiled as § 49-2703.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 6 of S.L. 1990, ch. 391 provided that the act would become effective January 1, 1991.

Section 17 of S.L. 2009, ch. 157 declared an emergency. Approved April 9, 2009.

CASE NOTES

Motor Vehicle.

Although the Chapter 7 debtors’ ATV was self-propelled, and carried a license plate, because the roads on which it could operate were limited, and it was not required to meet safety standards, it did not qualify as a motor vehicle under Idaho law. *In re Bosworth*, 449 B.R. 104 (Bankr. D. Idaho 2011).

§ 67-7123. Transfer of number certificates and restricted vehicle license plate. — The purchaser of an all-terrain vehicle, utility type vehicle or motorbike, which has been previously issued a number certificate pursuant to section 67-7122, Idaho Code, and issued a restricted vehicle license plate pursuant to section 49-402, Idaho Code, shall within fifteen (15) days after acquiring same, make application to the county assessor or county motor vehicle office as may be designated by the county assessor for transfer to him of the number certificate and restricted vehicle license plate issued to the vehicle, giving the same information as on the original application and the number of the number certificate and restricted vehicle license plate, and shall at the same time pay a transfer fee of one dollar and fifty cents (\$1.50).

History.

I.C., § 49-2703, as added by 1972, ch. 278, § 1, p. 684; am. and redesign. 1986, ch. 233, § 3, p. 641; am. and redesign. 1988, ch. 265, § 550, p. 549; am. 1994, ch. 288, § 2, p. 907; am. 2008, ch. 409, § 13, p. 1139; am. 2014, ch. 338, § 11, p. 838.

STATUTORY NOTES

Amendments.

The 2008 amendment, by ch. 409, rewrote the section catchline, which formerly read: “Transfer of sticker”; and rewrote the section, which formerly read: “The purchaser of an off-highway motor vehicle, which has been previously registered, shall within fifteen (15) days after acquiring same, make application to a vendor for transfer to him of the sticker of registration issued to the off-highway vehicle, giving the same information as on the original application and the number of the sticker, and shall at the same time pay a transfer fee of one dollar and fifty cents (\$1.50).”

The 2014 amendment, by ch. 338, substituted “number certificates” for “registration sticker” in the section heading; substituted “issued a number certificate” for “registered” preceding “pursuant to”; and substituted “number certificate” for “sticker of registration” and similar language twice.

Compiler's Notes.

This section which was enacted as § 49-2703 was amended and redesignated as § 49-2704 by S.L. 1986, ch. 233, § 3 and was further amended and redesignated as this section by S.L. 1988, ch. 265, § 550.

Section 15 of S.L. 2014, ch. 338 provided: "The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act."

Section 23 of S.L. 2014, ch. 338 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

§ 67-7124. Off-highway vehicles — Nonresident — Off-highway vehicle user certificate required. — (1) As of January 1, 2020, before operating within Idaho, any nonresident owner or applicant of a noncommercial off-highway vehicle shall be required to obtain a nonresident off-highway vehicle (OHV) user certificate. A fee of twelve dollars (\$12.00) shall be imposed for the issuance of a nonresident OHV user certificate. The validation sticker shall be displayed in the same manner as provided in section 67-7122, Idaho Code. Nonresident OHV user certificates shall be valid January 1 through December 31. Issuance and administration of nonresident OHV user certificates shall be conducted in the same manner as provided in section 67-7122, Idaho Code, for numbering off-highway vehicles.

(2) For purposes of this section, “nonresident” shall be as defined in [section 36-202, Idaho Code](#).

(3) Nonresidents shall be allowed to purchase a restricted vehicle license plate pursuant to [section 49-402\(4\), Idaho Code](#).

History.

[I.C., § 67-7124](#), as added by 2019, ch. 73, § 2, p. 171.

STATUTORY NOTES

Prior Laws.

Former § 67-7124, Nonresident — Exemption, which comprised [I.C., § 49-2704](#), as added by 1972, ch. 278, § 1, p. 684; am. and redesign. 1986, ch. 233, § 4, p. 641; am. and redesign. 1988, ch. 265, § 551, p. 549; am. 1989, ch. 106, § 11, p. 238; am. 2009, ch. 157, § 15, p. 458; am. 2014, ch. 338, § 12, p. 838, was repealed by S.L. 2019, ch. 73, § 1, effective July 1, 2019.

§ 67-7125. Noise abatement. — (1) Except as hereinafter provided, every vehicle subject to numbering under section 67-7122, Idaho Code, shall comply with the provisions of this section. Every vehicle subject to the provisions of this section shall at all times be equipped with an exhaust system in good working order and in constant operation. If the vehicle was originally equipped with a noise suppressing system or if the vehicle is required by law or regulation of this state or the federal government to have a noise suppressing system, that system shall be maintained in good working order. No person shall disconnect, modify or alter any part of that system in any manner which will amplify or increase the vehicle's noise emission above the noise limits established in subsection (3) of this section, except temporarily in order to make repairs, replacements or adjustments. No person shall operate and no owner shall cause or permit to be operated any vehicle while the vehicle's noise emission exceeds the noise limits established in subsection (3) of this section or while the vehicle's noise suppressing system is disconnected, modified or altered in violation of the provisions of this section.

(2) No person shall operate a vehicle subject to the provisions of this section unless that vehicle is equipped with a spark arrester device affixed to the exhaust system of a type qualified and rated by the United States forest service. The provisions of this subsection shall not apply to vehicles being operated off the highway in an organized racing or competitive event which is conducted on private land with the consent of the landowner.

(3) Any vehicle subject to the provisions of this section shall at all times be equipped with a noise suppressing system or other device which limits noise emission to a base level of not more than ninety-six (96) decibels when measured on the "A" scale using standards and procedures established by the society of automotive engineers (SAE), specifically SAE standard J1287, June, 1988, describing a test of a stationary vehicle with sound measured twenty (20) inches and forty-five (45) degrees from the exhaust outlet, or as otherwise described. The provisions of this subsection shall not apply to vehicles being operated off the highway in an organized racing or competitive event which is conducted on private land with the consent of the landowner or on public land under permit.

(a) The department shall adopt regulations in accordance with chapter 52, title 67, Idaho Code, establishing the test procedures and instrumentation to be utilized. These procedures shall incorporate requirements for the test site environment and sound measuring equipment as set forth in SAE standard J1287, June, 1988.

(b) Instrumentation shall include but not be limited to a sound level meter meeting the type 1, type S1A, type 2, or type S2A requirements of the American national standards institute (ANSI) specification for sound level meters, S1.4-1983; a sound level calibrator, microphone wind screen, external engine speed tachometer.

(4) A showing that the noise emission level of any vehicle subject to and not otherwise exempt from the provisions of this section exceeds ninety-six (96) decibels, as described and tested in subsection (3) of this section, shall be prima facie evidence of a violation of subsection (1) of this section.

History.

I.C., § 67-7125, as added by 1993, ch. 136, § 2, p. 335; am. 2005, ch. 164, § 1, p. 500; am. 2014, ch. 338, § 13, p. 838.

STATUTORY NOTES

Prior Laws.

Former § 67-7125, which comprised **I.C., § 49-2705**, as added by 1972, ch. 278, § 1, p. 684; am. and redesign. 1986, ch. 233, § 5, p. 641; am. and redesign. 1988, ch. 265, § 552, p. 549; am. 1989, ch. 106, § 12, p. 238, was repealed by S.L. 1993, ch. 136, § 1, effective July 1, 1994.

Amendments.

The 2014 amendment, by ch. 338, substituted “numbering” for “registration” in the first sentence.

Compiler’s Notes.

For more information on spark arrester devices rated by the United States forest service, referred to in subsection (2), see [https://www.fs.fed.us/t-d/programs/fire/spark arrester guides](https://www.fs.fed.us/t-d/programs/fire/spark_arrester_guides).

For further information on SAE Standard J1287, referred to in subsection (3), see https://www.sae.org/standards/content/j1287_199807.

For further information on ANSI Standard S1.4-1983, referred to in subsection (3), see https://webstore.ansi.org/Standards/ASA/ANSIS11983R20064a1_1985.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

Section 15 of S.L. 2014, ch. 338 provided: “The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act.”

Section 23 of S.L. 2014, ch. 338 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

Effective Dates.

Section 3 of S.L. 1993, ch. 136 provided that the act shall be in full force and effect on July 1, 1994.

§ 67-7126. Establishment of account — Distribution of fees. — There is established in the state treasurer's office an account to be known and designated as the "motorbike recreation account." The twelve dollar (\$12.00) fee collected for off-highway vehicle number certificates and user certificates under the provisions of section 67-7124, Idaho Code, shall be allocated as follows:

(1) Vendors shall charge and retain one dollar and fifty cents (\$1.50) for a handling fee;

(2) Up to fifteen percent (15%) shall be allotted to the department for administration and for the production of number certificates and validation stickers, which moneys shall be placed in the motorbike recreation account. The department shall annually publish a report specifically identifying the uses of account moneys;

(3) One dollar (\$1.00) shall be deposited into the off-highway vehicle law enforcement fund. Moneys in said fund shall be paid and used as follows:

(a) Sheriffs of counties with a current or an actively developing off-highway vehicle law enforcement program recognized by the department shall receive moneys from the fund based upon a formula as provided in rule promulgated by the board; and

(b) Moneys from the fund shall be used only for off-highway-related law enforcement activities; and

(4) One dollar (\$1.00) shall be allocated to the Idaho department of lands to provide off-highway vehicle opportunities and to repair damage directly related to off-highway vehicle use. The department of lands shall annually publish a report specifically identifying the uses of moneys allocated pursuant to this subsection; and

(5) The remaining funds shall be transmitted to the state treasurer's office for deposit to the credit of the motorbike recreation account, all such moneys to be transmitted to the state treasurer on or before the tenth day of each month.

Collection of fees for off-highway vehicle number certificates shall not impose any additional liability on the state of Idaho or any of its political subdivisions or upon the employees of the state and of its political subdivisions, and those entities and persons shall retain the limitations of liability provided by [section 36-1604, Idaho Code](#), regardless of the use of such fees.

History.

[I.C., § 49-2706](#), as added by 1972, ch. 278, § 1, p. 684; am. 1982, ch. 95, § 122, p. 185; am. 1984, ch. 195, § 29, p. 445; am. and redesign. 1986, ch. 233, § 6, p. 641; am. and redesign. 1988, ch. 265, § 553, p. 549; am. 1989, ch. 106, § 13, p. 238; am. 1994, ch. 288, § 3, p. 907; am. 2009, ch. 157, § 16, p. 458; am. 2014, ch. 338, § 14, p. 838; am. 2019, ch. 73, § 3, p. 171.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

The 2009 amendment, by ch. 157, in the introductory paragraph, substituted “twelve dollar (\$12.00) fee” for “ten (\$10.00) dollar fee”; added the last sentence in subsection (2); added subsections (3) and (4); and redesignated former subsection (3) as subsection (5), and therein substituted “tenth day of each month” for “10th day of each month” and added the last sentence.

The 2014 amendment, by ch. 338, substituted “number certificates” for “registration stickers” in the introductory language; substituted “number certificates and validation stickers” for “registration stickers” in the first sentence in subsection (2); and substituted “number certificates” for “registration” in the last paragraph in the section.

The 2019 amendment, by ch. 73, inserted “and user certificates under the provisions of [section 67-7124, Idaho Code](#)” near the end of the introductory paragraph.

Compiler's Notes.

This section which was enacted as § 49-2706 was amended and redesignated as § 49-2707 by S.L. 1986, ch. 233, § 6 and was further amended and redesignated as this section by S.L. 1988, ch. 265, § 553.

Section 15 of S.L. 2014, ch. 338 provided: "The department and the board are hereby authorized and directed to adopt and/or amend rules necessary to implement the provisions of this act."

Section 23 of S.L. 2014, ch. 338 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 17 of S.L. 2009, ch. 157 provided the amendment of this section should take effect on and after January 1, 2010.

OPINIONS OF ATTORNEY GENERAL

Vendor Fees.

The fees described in this section and §§ 67-7013, 67-7014, 67-7106, and 67-7118 are two different types: "Vendor" or "handling" fees (hereafter referred to in the collective as vendor fees), which the Idaho department of parks and recreation (IDPR) collects when it acts as a vendor of recreational registrations, and administrative funds which are allocated to IDPR as a percentage of recreational registration revenue. Vendor fees should be used to offset expenses attributable to the department's registration functions. Excess vendor fees may be expended at the agency's discretion. Administrative funds may be expended to cover the direct costs of administering the respective recreational programs, and may, in addition, be used to cover a proportionate share of general administrative costs. OAG 96-4.

§ 67-7127. Use of moneys in account. — The board shall administer the motorbike recreation account. The moneys derived from this account shall be used as follows:

(1) For the securing of special leases, use licenses, recreation easements or permits, or for the actual purchase of land under private, state or federal ownership to be used for recreational off-highway vehicle activity; (2) For the securing, maintenance, construction or development of trails and other recreational facilities for off-highway vehicle use on state and federal lands; (3) To finance the formulation and implementation under the board's direction of an off the road rider education program.

(4) To acquire applicable federal matching funds.

History.

I.C., § 49-2707, as added by 1972, ch. 278, § 1, p. 684; am. and redesign. 1986, ch. 233, § 7, p. 641; am. and redesign. 1988, ch. 265, § 554, p. 549; am. 1989, ch. 106, § 14, p. 238; am. 2016, ch. 120, § 2, p. 352.

STATUTORY NOTES

Cross References.

Motorbike recreation account, § 67-7126.

Amendments.

The 2016 amendment, by ch. 120, inserted “use licenses, recreation easements” in subsection (1).

Compiler's Notes.

This section which was enacted as § 49-2707 was amended and redesignated as § 49-2708 by S.L. 1986, ch. 233, § 7 and was further amended and redesignated as this section by S.L. 1988, ch. 254, § 554.

§ 67-7128. Off-road motor vehicle advisory committee — Creation — Selection — Term of office — Duty. — (1) The park and recreation board shall appoint an off-road motor vehicle advisory committee (ORMV) of nine (9) members. The membership of the advisory committee shall consist of three (3) members each from northern Idaho, southwestern Idaho, and southeastern Idaho. Two (2) members from each area shall represent the following groups: motorbikes, ATV or UTV riders and snowmobilers. One (1) member interested in ORMV projects shall be appointed from each area without regard to the recreational activity in which that member participates and shall represent interests other than motorbike, ATV or UTV riders and snowmobilers. Each member of the advisory committee shall be chosen by the park and recreation board to serve a term of three (3) years, except that the term of the initial appointees shall commence on the date of appointment and shall be of staggered lengths. Each member of the advisory committee shall be a qualified elector of the state. Duties shall include:

- (a) Representing the best interests of the ORMV users and activities which they represent in the district from which they are appointed;
- (b) Advising the department as to whether proposed ORMV projects meet the needs of ORMV users in that area;
- (c) Advising the department as to how funds can be used to rehabilitate areas on public or private lands and how the department can assist in the enforcement of laws and regulations governing the use of off-road vehicles in the state of Idaho;
- (d) The three (3) motorbike, all-terrain vehicle or utility type vehicle representatives from the ORMV advisory committee shall advise the department on matters relating to the use of moneys in the motorbike recreation account as provided for in [section 67-7127, Idaho Code](#).

(2) The committee shall be compensated as provided in [section 59-509\(f\), Idaho Code](#), and authorized by the department.

History.

I.C., § 67-7128, as added by ch. 106, § 16, p. 238; am. 2006, ch. 42, § 3, p. 122; am. 2006, ch. 229, § 3, p. 683.

STATUTORY NOTES

Cross References.

Park and recreation board, § 67-4221.

Prior Laws.

Former § 67-7128, which comprised **I.C., § 49-2708**, as added by 1972, ch. 278, § 1, p. 684; am. 1980, ch. 247, § 48, p. 582; am. and redesign. 1986, ch. 233, § 8, p. 641; am. and redesign. 1988, ch. 265, § 555, p. 549, was repealed by S.L. 1989, ch. 106, § 15, effective March 27, 1989.

Amendments.

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 42, inserted “or UTV” twice in the introductory paragraph of subsection (1), and inserted “or utility type vehicle” in subsection (1)(d).

The 2006 amendment, by ch. 229, in subsection (1), decreased the terms of the advisory committee members from four years to three years; and in subsection (2), substituted “committee shall be compensated as provided” for “department may reimburse members of the ORMV advisory committee for reasonable expenses incurred in the conduct of their official duties prescribed.”

Effective Dates.

Section 17 of S.L. 1989, ch. 106 declared an emergency. Approved March 27, 1989.

§ 67-7129. Penalties. [Repealed.]

Repealed by S.L. 2016, ch. 120, § 3, effective July 1, 2016. For present comparable provisions, see § 67-7113.

History.

I.C., § 49-2709, as added by 1972, ch. 278, § 1, p. 684; am. and redesign. 1986, ch. 233, § 9, p. 641; am. and redesign. 1988, ch. 265, § 556, p. 549; am. 2003, ch. 92, § 1, p. 277.

• Title 67 •, « Ch. 71 », « § 67-7130, 67-7131 »

Idaho Code § 67-7130, 67-7131

§ 67-7130, 67-7131. [Reserved.]

• Title 67 •, « Ch. 71 », « § 67-7132 »

Idaho Code § 67-7132

§ 67-7132. Rules and regulations. — The director shall adopt and enforce administrative rules and regulations under the provisions of chapter 52, title 67, Idaho Code, as necessary to carry out the provisions of this chapter.

History.

I.C., § 49-2615, as added by 1983, ch. 239, § 5, p. 644; am. and redesign. 1988, ch. 265, § 557, p. 549.

STATUTORY NOTES

Compiler's Notes.

This section was formerly compiled as § 49-2615.

§ 67-7133. Responsibility for enforcement. — The provisions of this chapter, and any rule promulgated by the department pursuant to this chapter, shall be enforced by the law enforcement personnel of the Idaho state police, the department of fish and game, employees of the department of parks and recreation authorized by the director of the Idaho state police, the sheriffs and their deputies of the various counties in the state and peace officers of each city.

History.

1969, ch. 338, § 12, p. 1061; am. 1982, ch. 95, § 120, p. 185; am. 1983, ch. 239, § 4, p. 644; am. and redesign. 1988, ch. 265, § 558, p. 549; am. 2000, ch. 469, § 139, p. 1450; am. 2016, ch. 120, § 4, p. 352.

STATUTORY NOTES

Cross References.

Department of fish and game, § 36-101 et seq.

Department of parks and recreation, § 67-4218.

Idaho state police, § 67-2901 et seq.

Amendments.

The 2016 amendment, by ch. 120, inserted “and any rule promulgated by the department pursuant to this chapter” near the beginning of the section.

Compiler’s Notes.

This section was formerly compiled as § 49-2612.

Effective Dates.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1989.

Chapter 72

COMMISSION ON HISPANIC AFFAIRS

Sec.

67-7201. Commission created — Appointment of members.

67-7202. Organization of commission.

67-7203. Resources and staffing.

67-7204. State departments, agencies and political subdivisions to cooperate.

67-7205. Powers and duties of the commission.

67-7206. Commission terminated. [Repealed.]

§ 67-7201. Commission created — Appointment of members. —

There is hereby created the Idaho Commission on Hispanic Affairs, hereafter referred to as the commission. The commission shall consist of nine (9) members, two (2) to be appointed by the president pro tempore of the senate from the members of the senate; two (2) to be appointed by the speaker of the house of representatives from the members of the house; and five (5) public members to be selected from the Hispanic community who reside in and represent the various geographical areas of the state which contain a significant Hispanic population. The five (5) public members shall be appointed by the governor. Of the five (5) public members first to be appointed, two (2) shall be appointed for a term of one (1) year, two (2) shall be appointed for a term of two (2) years and one (1) shall be appointed for a term of three (3) years. The governor shall specify the term of each public member when making the initial appointments. All initial appointments shall commence on July 1, 1987. All subsequent terms shall be for three (3) years. Vacancies shall be filled in the same manner as the original appointments and for the balance of the unexpired term.

History.

I.C., § 67-7201, as added by 1987, ch. 163, § 1, p. 320.

§ 67-7202. Organization of commission. — The commission shall meet not more than four (4) times a year. The commission shall elect a chairperson and a vice chairperson and other officers from its members as it deems advisable. Five (5) members constitute a quorum. Commission members shall be compensated as provided in section 59-509(b), Idaho Code. Emergency sessions may be called by a two-thirds (2/3) majority of the commissioners.

History.

I.C., § 67-7202, as added by 1987, ch. 163, § 1, p. 320; am. 1998, ch. 161, § 1, p. 549.

§ 67-7203. Resources and staffing. — The commission shall secure resources from public and private sources and shall have the authority to hire staff when resources are available to support personnel. The commission shall utilize talent, expertise, and resources within the state, and especially that of the university system, to whatever extent practical.

History.

I.C., § 67-7203, as added by 1987, ch. 163, § 1, p. 320.

§ 67-7204. State departments, agencies and political subdivisions to cooperate. — The commission may procure information and assistance from the state or any political subdivision thereof, or any state department or agency. All agencies, officers, and political subdivisions of the state shall give the commission all relevant information and assistance on any matters of research within their knowledge or control.

History.

I.C., § 67-7204, as added by 1987, ch. 163, § 1, p. 320.

§ 67-7205. Powers and duties of the commission. — The commission shall have the following powers and duties:

(1) To gather and disseminate information and conduct hearings, conferences, investigations, and special studies on problems and programs concerning Hispanic people; (2) To stimulate public awareness of the problems of Hispanic people by conducting a program of public education; (3) To develop, coordinate, and assist other public and private organizations that serve Hispanic people, including the conducting of training programs for community leadership; (4) To advise the governor, legislature and state departments and agencies of the nature, magnitude, and priorities of the problems of Hispanic people; (5) To advise the governor, legislature and state departments and agencies on, and assist in the development and implementation of, comprehensive and coordinated policies, programs, and procedures focusing on the special problems and needs of Hispanic people, fields of education; and employment; (6) To propose new programs concerning Hispanic people to public and private agencies and evaluate for such agencies existing programs or prospective legislation concerning Hispanic people; (7) To establish advisory committees on special subjects or projects;

(8) To apply for and accept federal funds granted by congress or executive order for all or any of the purposes of this chapter as well as gifts and donations from individuals, corporations, private organizations or foundations, and to accept volunteer clerical or staff work; (9) To cooperate or contract with individuals and state, local and other agencies, both public and private, including agencies of the federal government and of other states; (10) To meet and exercise its powers at any place within the state;

(11) To make bylaws for its own governance and procedure not inconsistent with the laws of this state.

History.

I.C., § 67-7205, as added by 1987, ch. 163, § 1, p. 320.

§ 67-7206. Commission terminated. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, as added by 1987, ch. 163, § 1, p. 320, was repealed by S.L. 1989, ch. 422, § 1.

Chapter 73
IDAHO STATE COUNCIL FOR THE DEAF AND HARD OF
HEARING

Sec.

67-7301. Declaration of purpose.

67-7302. Definitions.

67-7303. Idaho state council for the deaf and hard of hearing created.

67-7304. Composition.

67-7305. Appointment and term of office.

67-7306. Organization of council — Employment of necessary personnel.

67-7307. Responsibilities and duties.

67-7308. Short title.

§ 67-7301. Declaration of purpose. — The legislature finds that Idaho’s deaf and hard of hearing citizens make up thirteen percent (13%) of the state’s population, with approximately one-half (1/2) of this constituency being elderly. Deaf and hard of hearing individuals are capable of doing everything well except hearing. The deaf and hard of hearing need help in bridging the communication gap into the hearing world. Deaf and hard of hearing individuals deserve equal access to jobs, housing, education, and information. Unfortunately, the needs of the deaf and hard of hearing have long been overlooked and underserved. Services that are available are fragmented and incomplete. There is an urgent need for an entity to coordinate state-level programs to assure accommodation and access services for the deaf and hard of hearing. The purpose of this chapter is to establish an advisory council for the deaf and hard of hearing whose mission will be to create an environment in which deaf and hard of hearing Idahoans of all ages have an equal opportunity to participate fully as active, responsible, productive, and independent citizens of the state.

History.

I.C., § 67-7301, as added by 1991, ch. 122, § 1, p. 265; am. 2020, ch. 12, § 7, p. 19.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 12, substituted “thirteen percent (13%)” for “ten percent (10%)” near the middle of the first sentence and substituted “deaf and hard of hearing” for “hearing-impaired” near the middle of the last sentence.

§ 67-7302. Definitions. — As used in this chapter:

(1) “Advocacy” means to act in the interests of the deaf and hard of hearing population.

(2) “Council” means the Idaho state council for the deaf and hard of hearing.

(3) “Deaf” means those in whom the sense of hearing is not functional for the ordinary purposes of life. “Deaf” includes several kinds of deafness: prelingually deaf, postlingually deaf and deafened as defined by the Gallaudet university study on hearing loss.

(4) “Hard of hearing” means those persons whose hearing is diminished to an extent that makes hearing difficult but does not preclude the understanding of spoken communication through the ear alone, with or without a hearing aid.

History.

I.C., § 67-7302, as added by 1991, ch. 122, § 1, p. 265; am. 2020, ch. 12, § 8, p. 19.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 12, substituted “diminished” for “impaired” near the beginning of subsection (4) and deleted former subsection (5), which read: “Hearing impaired’ means those who are deaf or hard of hearing.”

Compiler’s Notes.

For further information on Gallaudet university studies on hearing, referred to in subsection (3), see <https://www3.gallaudet.edu/clerc-center/info-to-go/hearing-related/about-hearing.html>.

§ 67-7303. Idaho state council for the deaf and hard of hearing created. — (1) The Idaho state council for the deaf and hard of hearing is hereby created. The council shall be the interdepartmental and interagency planning and advisory body for the departments and agencies of the state for programs and services affecting persons who are deaf or hard of hearing.

(2) For budgetary purposes and for administrative support purposes, the council shall be assigned, by the governor, to a department or office within the state government. However, this assignment shall not interfere with the interdepartmental and interagency planning, coordinating, influencing, evaluating and monitoring functions of the council.

History.

I.C., § 67-7303, as added by 1991, ch. 122, § 1, p. 265; am. 2020, ch. 12, § 9, p. 19.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 12, substituted “who are deaf or hard of hearing” for “with a hearing impairment” at the end of subsection (1).

§ 67-7304. Composition. — (1) The council shall consist of nine (9) members to be appointed by the governor.

(2) Membership shall be as follows: one (1) member shall be a deaf person representing an association of the deaf, one (1) member shall be a deaf person, one (1) member shall be the parent of a deaf child, one (1) member shall be a hard of hearing member of a hard of hearing consumer organization, one (1) member shall be a hard of hearing person over the age of sixty (60) years, one (1) member shall be the parent of a hard of hearing child, one (1) member shall be a licensed sign language interpreter, one (1) member shall be a licensed physician, and one (1) member shall be an ASHA-certified audiologist.

(3) The following shall serve as ex officio nonvoting members of the council: a representative from each of the following: the Idaho bureau of educational services for the deaf and the blind, the state department of education, the division of vocational rehabilitation, the commission on aging, the department of health and welfare, the bureau of occupational licenses, the department of labor, the public utilities commission, the consumer protection division of the office of the attorney general, and the director of the council for the deaf and hard of hearing.

(4) Due regard shall be given to balanced representation from geographical and demographic areas of the state for voting members of the council.

(5) Voting members of the council shall be compensated as provided in [section 59-509\(b\), Idaho Code](#).

History.

[I.C., § 67-7304](#), as added by 1991, ch. 122, § 1, p. 265; am. 2009, ch. 168, § 8, p. 502; am. 2020, ch. 12, § 10, p. 19.

STATUTORY NOTES

Cross References.

Bureau of educational services for the deaf and blind, § 33-3401 et seq.

Department of health and welfare, § 56-1001 et seq.

Director of council for the deaf and hard of hearing, § 67-7306.

Public utilities commission, § 61-201.

State department of education, § 33-125.

Amendments.

The 2009 amendment, by ch. 168, substituted “the Idaho bureau of educational services for the deaf and the blind” for “the Idaho school for the deaf and blind” in subsection (3).

The 2020 amendment, by ch. 12, in subsection (2), deleted “national” preceding “hard of hearing consumer” near the beginning and substituted “a licensed sign language interpreter” for “an interpreter for the deaf” near the end; and in subsection (3), substituted “commission on aging” for “office of aging” and “department of labor” for “department of employment” and deleted “the Idaho hearing aid society” following “office of the attorney general.”

Legislative Intent.

Section 1 of S.L. 2020, ch. 96 provided: “Legislative Intent. It is the intent of the Legislature that following the effective date of this Act [March 11, 2020] any references to the Bureau of Occupational Licenses in Idaho Code be understood to refer to the Division of Occupational and Professional Licenses. See § 67-2602.

Compiler’s Notes.

For further information on the American speech-language-language-hearing association (ASHA), referred to in subsection (2), see <https://www.asha.org>.

For more on division of vocational rehabilitation, referred to in subsection (3), see <https://vr.idaho.gov>.

For more on the consumer protection division of the office of attorney general, referred to in subsection (3), see <https://www.ag.idaho.gov/consumer-protection>.

§ 67-7305. Appointment and term of office. — (1) Council members' terms shall be for three (3) years.

(2) For purposes of the initial appointments, the deaf person representing an association of the deaf, the hard of hearing person representing a hard of hearing consumer organization, and the licensed physician shall be appointed for three (3) year terms; the deaf person, the hard of hearing person over the age of sixty (60) years and the audiologist shall be appointed for two (2) year terms; and the parent of a deaf child, the parent of a hard of hearing child and the interpreter for the deaf shall be appointed for a one (1) year term.

(3) A vacancy occurring in the membership of the council shall be filled by appointment of the governor for the unexpired portion of the vacated term.

(4) Members may be replaced because of poor attendance, lack of participation in the council's work, or malfeasance in office.

History.

I.C., § 67-7305, as added by 1991, ch. 122, § 1, p. 265.

§ 67-7306. Organization of council — Employment of necessary personnel. — (1) The council members shall elect a chairman from among the council membership who shall serve for a one (1) year term.

(2) The council shall adopt and amend bylaws governing its proceedings, activities and organization including, but not limited to, provisions for election of officers other than the chairman; provision for a quorum, procedure, frequency and location of meetings; and establishment, functions and membership of council committees.

(3) The council shall employ and fix the compensation, subject to provisions of chapter 53, title 67, Idaho Code, of such personnel as may be necessary including, but not limited to, a full-time administrator, who shall be designated as the executive director of the council and who shall be exempt under the provisions of chapter 53, title 67, Idaho Code.

History.

I.C., § 67-7306, as added by 1991, ch. 122, § 1, p. 265.

§ 67-7307. Responsibilities and duties. — The council shall:

(1) Work to increase access to employment, educational and social-interaction opportunities for deaf and hard of hearing individuals.

(2) Increase awareness of the needs of the deaf and hard of hearing through educational and informational programs.

(3) Encourage consultation and cooperation among departments, agencies and institutions serving the deaf and hard of hearing.

(4) Provide a network through which all state and federal programs dealing with deaf and hard of hearing individuals can be channeled.

(5) Determine the extent and availability of services to the deaf and hard of hearing, determine the need for further services and make appropriate recommendations to government officials to ensure that the needs of deaf and hard of hearing citizens are best served.

(6) Coordinate, advocate for, and recommend the development of public policies and programs that provide full and equal opportunity and accessibility for deaf and hard of hearing persons in Idaho.

(7) Monitor consumer protection issues that involve the deaf and hard of hearing population of the state of Idaho.

(8) Submit periodic reports to the governor, the legislature, and departments of state government on how current federal and state programs, rules, regulations, and legislation affect services to persons who are deaf or hard of hearing.

History.

I.C., § 67-7307, as added by 1991, ch. 122, § 1, p. 265; am. 2020, ch. 12, § 11, p. 19.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 12, substituted “who are deaf or hard of hearing” for “with hearing impairments” at the end of subsection (8).

§ 67-7308. Short title. — This chapter shall be known and may be cited as the “Idaho State Council for the Deaf and Hard of Hearing Act.”

History.

I.C., § 67-7308, as added by 1991, ch. 122, § 1, p. 265; am. 2020, ch. 12, § 12, p. 19.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 12, substituted “Council for the Deaf” for “Council on the Deaf” near the end.

Chapter 74

IDAHO STATE LOTTERY

Sec.

67-7401. Purpose.

67-7402. Idaho lottery agency created.

67-7403. Initiation and operation of the lottery.

67-7404. Definitions.

67-7405. Commission — Appointment — Chairman.

67-7406. Quorum — Meetings — Minutes — Compensation.

67-7407. Director.

67-7408. Powers and duties of the commission.

67-7409. Powers and duties of the director.

67-7410. Director of lottery security.

67-7411. Contracting with lottery game retailers.

67-7412. Selection of lottery game retailers.

67-7413. Termination of the lottery game retailer.

67-7414. Compensation for lottery game retailers.

67-7415. Sales to persons under the age of eighteen.

67-7416. Display of certificate of authority.

67-7417. Lottery game retailer bonding.

67-7418. Lottery game retailer accounting.

67-7419. Lottery game retailer payments.

67-7420. Contracts for major procurements.

67-7421. Lottery vendor disclosures for major procurements.

67-7422. Separation of vendors and retailers.

67-7423. Enforceability of contracts.

67-7424. Information under oath.

67-7425. Misstatements or omissions.

67-7426. Compliance with applicable laws.

67-7427. Vendor performance bonds.

67-7428. State lottery account.

67-7429. Prohibition on use of state funds.

67-7430. Temporary line of credit for start-up costs. [Repealed.]

67-7431. Cash receipts.

67-7432. Cash disbursements.

67-7433. Prize expense.

67-7434. Lottery dividends.

67-7435. Reimbursements for government services.

67-7436. Audits.

67-7437. Prizes.

67-7438. Prize claiming period.

67-7439. Taxes.

67-7440. Restricted players.

67-7441. Records.

67-7442. Open public meetings of the commission.

67-7443. Conflict of interest.

67-7444. Limitation on actions.

67-7445. Conditions of purchase.

67-7446. Restrictions.

67-7447. Lawful activity.

67-7448. Prohibited acts — Penalties.

67-7449. Cap on administrative costs.

67-7450. Audit of funds — Reports.

67-7451. Lottery exempt from state procurement act.

67-7452. Severability.

§ 67-7401. Purpose. — The purpose of this legislation is to establish a state lottery to generate revenue for the state with a director and a state lottery commission to oversee lottery operations. This chapter establishes a state lottery account for the deposit of receipts, for payment of prizes and expenses, and provides that revenues generated in the lottery account, after allowances for prizes and expenses, shall be distributed for the public benefit. This chapter provides for contracting with lottery retailers and authorizes the promulgation of administrative rules and regulations necessary for carrying out the intent of this chapter. The lottery commission and the director of the lottery shall be responsible for operating the lottery at the least public expense and the smallest staffing possible, commensurate with all other policies stated in this chapter. Additionally, all advertising by the lottery shall be conducted in a manner consonant with the dignity of the state and the sensibilities of its citizens.

History.

I.C., § 67-7401, as added by 1988, ch. 232, § 2, p. 446.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1988, ch. 232 read: “This act shall be in full force and effect on and after the date of adoption of House Joint Resolution No. 3, First Regular Session, Forty-ninth Idaho Legislature [S.L. 1987, p. 801], by the electorate of the State of Idaho as required by law.”

House Joint Resolution 3 was adopted by the electorate at the general election of November 8, 1989.

§ 67-7402. Idaho lottery agency created. — There is hereby created in the department of self-governing agencies an agency to be known as the Idaho state lottery. The Idaho state lottery shall implement and administer the provisions of this chapter.

History.

I.C., § 67-7402, as added by 1988, ch. 232, § 2, p. 446.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601 et seq.

§ 67-7403. Initiation and operation of the lottery. — The lottery shall be initiated at the earliest feasible and practical time. The lottery shall be operated to produce the maximum amount of net income to benefit the public purposes described in this chapter consonant with the public good. Other state government departments, boards, commissions, agencies and their officers shall cooperate with the lottery to aid the lottery in fulfilling these objectives.

History.

I.C., § 67-7403, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7404. Definitions. — As used in this chapter:

(1) “Administrative costs” means personnel costs, capital outlay, and reasonable expenses incurred by other state agencies to effectuate the purposes of this chapter.

(2) “Commission” means the Idaho state lottery commission.

(3) “Director” means the director of the lottery.

(4) “Expenses” means all costs of doing business including, but not limited to, prizes, commissions and other compensation paid to retailers, advertising and marketing costs, personnel costs, capital outlay, reasonable expenses incurred by other state agencies to effectuate the purposes of this chapter, depreciation of property and equipment, and other operating costs, all of which are to be recorded on the accrual basis of accounting in accordance with generally accepted accounting principles.

(5) “Lottery” or “state lottery” means the state lottery established and operated pursuant to this chapter.

(6) “Lottery contractor” means a person with whom the lottery has contracted for the purposes of providing goods and services for the state lottery.

(7) “Lottery game retailer” or “retailer” means a person with whom the lottery has contracted for the purpose of selling tickets or shares in lottery games to the public.

(8) “Lottery revenue” means revenue derived from the sale of lottery tickets and shares. Such revenues shall be recorded on the accrual basis of accounting in accordance with generally accepted accounting principles.

(9) “Lottery vendor” or “vendor” means any person who submits a bid, proposal or offer as part of a major procurement for goods or services as defined in subsection (11) of this section.

(10) “Low, medium and high tier claims” means the dollar amount of prizes awarded in accordance with rules of the state lottery.

(11) “Major procurement” means any contract with a vendor supplying lottery tickets or shares, data processing systems utilized to track, sell, distribute or validate lottery tickets or shares, any goods or services involving the determination or generation of winners in any lottery game or any auditing services. A major procurement shall be undertaken at all times in conformance with the constitution and laws of the state of Idaho, and lottery vendors in submitting a bid, proposal or offer as part of a major procurement for goods or services as defined in this subsection shall be undertaken at all times in conformance with the constitution and laws of the state of Idaho.

(12) “Net income” means lottery revenue and nonlottery revenue, less expenses, as defined in this chapter.

(13) “Person” shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. “Person” shall also be construed to mean and include departments, commissions, agencies and instrumentalities of the state of Idaho, including counties and municipalities and agencies or instrumentalities thereof.

(14) “Redemption value” means the sum total of all winnings upon the ticket presented for payment.

(15) “Share” means any intangible evidence of participation in a game conducted by the state lottery.

(16) “Ticket” means any tangible evidence issued by the lottery to provide participation in a game conducted by the state lottery.

(17) “Value” means any ticket shall be taken at face value.

History.

I.C., § 67-7404, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 1, p. 879; am. 2001, ch. 196, § 1, p. 663; am. 2017, ch. 54, § 1, p. 84.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 54, added the last sentence in subsection (11).

§ 67-7405. Commission — Appointment — Chairman. — The commission shall consist of five (5) members appointed by the governor with the advice and consent of the senate. The term of a member is five (5) years. The terms of members appointed shall expire as designated by the governor at the time of appointment: One (1) at the end of one (1) year; one (1) at the end of two (2) years; one (1) at the end of three (3) years; one (1) at the end of four (4) years; and one (1) at the end of five (5) years. At the end of a term, a member continues to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. A vacancy of the commission shall be filled in the same manner as regular appointments are made, and the term shall be for the unexpired portion of the regular term. No member of the commission shall have a direct or indirect pecuniary interest in any contract or agreement entered into by the commission. The chairman of the commission shall be appointed by the governor from among the members of the commission. No more than three (3) members of the commission shall belong to the same political party. The members of the commission shall serve at the pleasure of the governor.

History.

I.C., § 67-7405, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7406. Quorum — Meetings — Minutes — Compensation. — A majority of the qualified membership of the commission is a quorum. The commission may not act unless at least three (3) members concur. The commission shall not meet less than four (4) times per year. Written notice of the time and place of each commission meeting shall be given to each member of the commission. The secretary of the commission shall promptly send the governor a certified copy of the minutes of each meeting of the commission. The minutes shall include a copy of each rule of the lottery that is adopted. Members of the commission shall receive compensation as provided in section 59-509(h), Idaho Code. Members are entitled to reimbursement for reasonable travel expenses incurred in the performance of their duties as a member, as provided by law.

History.

I.C., § 67-7406, as added by 1988, ch. 232, § 2, p. 446; am. 2000, ch. 75, § 1, p. 158.

STATUTORY NOTES

Cross References.

Per diem regulations, § 67-2004.

§ 67-7407. Director. — With the advice and consent of the senate the governor shall appoint a director of the lottery, who is the chief executive officer of the lottery and secretary of the commission. The compensation of the director, including bonuses, if any, shall be established by the commission. The director shall serve at the pleasure of the governor.

History.

I.C., § 67-7407, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7408. Powers and duties of the commission. — The commission shall be responsible for establishing the goals and objectives of the lottery and shall have the following duties, powers and responsibilities in addition to others herein granted:

(1) The commission shall adopt, upon recommendation of the director, such rules and regulations governing the establishment and operation of the lottery as it considers necessary under this chapter to ensure the integrity of the lottery and its games and to maximize the net income of the lottery for the benefit of the state. Such rules and regulations shall generally address, but not be limited to:

- (a) The different types of lottery games to be conducted;
- (b) The range of prize structures of each lottery game;
- (c) The method, odds and frequency of selecting winning tickets and shares and the manner of paying prizes to the owners of the winning tickets and shares;
- (d) The terms and conditions of lottery game retailer contracts which may include retailer compensation, bonuses, incentives, fees for redeeming claims, payment and credit terms, retailer application and renewal fees, telecommunication costs, if any, to be paid or allocated to retailers and bonding requirements;
- (e) The methods to be utilized in selling and distributing lottery tickets or shares, including the use of machines, terminals, telecommunications systems and data processing systems. Customer operated machines, terminals or other devices for selling lottery tickets or shares shall only be operated by the use of currency or coin; and
- (f) Other matters necessary or appropriate for the efficient operation and administration of the lottery, for the convenience of the public, and to carry out the provisions of this chapter. Every rule promulgated within the authority conferred by this chapter shall be of temporary effect and must be ratified by the legislature at the regular session first following their adoption. Rules not approved in the above manner shall be rejected,

null, void and of no force and effect on July 1, following their submission to the legislature.

(2) The commission shall approve major procurements.

(3) The commission shall approve the transfer of net income in accordance with the provisions of this chapter.

(4) The commission shall have the authority to enter into written agreements or contracts, negotiated and prepared by the director, with any other state or states, the government of Canada, the provinces of Canada or an agency or contractor of any of those entities for the operation and promotion of a joint lottery or joint lottery games.

(5) The commission shall perform all other acts necessary to carry out the purposes and provisions of this chapter.

History.

I.C., § 67-7408, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 2, p. 879; am. 2013, ch. 341, § 1, p. 899.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 341, added the last sentence in paragraph (1)(e).

§ 67-7409. Powers and duties of the director. — The director shall be responsible for the daily operations of the lottery, and shall have the following duties, powers and responsibilities in addition to others herein granted:

(1) The director shall:

(a) Operate and administer the lottery in accordance with the provisions of this chapter and the policies and rules of the lottery;

(b) Appoint deputy directors, sales personnel and security staff, who shall be exempt from the provisions of chapter 53, title 67, Idaho Code, as may be required to carry out the functions and duties of his office; and

(c) Hire professional, technical and other employees as may be necessary to perform the duties of his office subject to the provisions of chapter 53, title 67, Idaho Code.

(2) The director shall:

(a) Confer regularly with the commission on the operation and administration of the lottery;

(b) Make available for inspection by the commission, on request, all books, records, files, and other information and documents of the lottery; and

(c) Advise the commission and make such recommendations as the director considers necessary and advisable to improve the operation and administration of the lottery.

(3) The director may enter into contracts for marketing, advertising, promotion, research and studies for the lottery and for products and services for effectuating the purposes of this chapter, however, contracts for major procurements must be approved by the commission. The director may not enter into contracts for the administration of the lottery.

(4) The director shall:

(a) Submit quarterly financial statements to the commission, the governor, the state treasurer, and the legislature. Such financial

statements shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. Such financial statements are to be provided within forty-five (45) days of the last day of each quarter;

(b) Submit annual financial statements to the commission, the governor, the state treasurer, and each member of the legislature. Such financial statements shall be prepared in accordance with generally accepted accounting principles and shall include a balance sheet, a statement of operations, a statement of changes in financial position, and related footnotes. Such financial statements shall have been examined by the legislative services office or a firm of independent certified public accountants in accordance with generally accepted auditing standards and shall be provided within ninety (90) days of the last day of the lottery's fiscal year;

(c) Report to the governor and the legislature any matters which require immediate changes in the laws of this state in order to prevent abuses and evasions of this chapter or the rules of the lottery or to rectify undesirable conditions in connection with administration or operation of the lottery;

(d) Carry on a continuous study and investigation of the lottery to:

(i) Identify any defects in the provisions of this chapter or in the rules and regulations of the commission leading to an abuse in the administration or operation of the lottery or an evasion of this act or the rules of the lottery;

(ii) Make recommendations for changes in this chapter or the rules of the lottery to prevent abuses or evasions or to improve the efficiency of the lottery;

(iii) Ensure that the provisions of this chapter and the rules of the lottery are administered and formulated to serve the purposes of this chapter;

(iv) Prevent the use of the lottery, the provisions of this chapter, or the rules of the lottery from fostering professional gambling or crime;

(e) Make a continuous study and investigation of:

- (i) The operation and administration of similar laws and lotteries in other states and countries;
- (ii) The available information on the subject of lotteries and related subjects;
- (iii) Any federal laws which may affect the operation of the lottery; and
- (iv) The reaction of citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

(5) The director shall provide for secure lottery facilities and lottery systems, including data processing facilities and systems.

(6) The director shall be responsible for monitoring class III gaming on Indian reservations as may be required by compacts entered into by the state in accordance with state statutory law and pursuant to the Indian Gaming Regulatory Act, [25 U.S.C. section 2701 et seq.](#) and [18 U.S.C. sections 1166-1168.](#)

(7) The director shall perform all other acts necessary to carry out the purposes and provisions of this chapter.

History.

[I.C., § 67-7409](#), as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 3, p. 879; am. 1993, ch. 249, § 1, p. 871; am. 1994, ch. 180, § 231, p. 420; am. 2003, ch. 32, § 45, p. 115.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The term “this act” in paragraph (4)(d)(i) refers to S.L. 1988, Chapter 232, which is compiled as §§ 67-7401 to 67-7449, 67-7451, and 67-7452.

Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 231 was effective January 2, 1995.

§ 67-7410. Director of lottery security. — The director shall hire a security director who shall manage the lottery's security division. The security division shall be responsible for the performance of background investigations of employees, lottery retailers, bingo and raffle operators, vendors and major procurement contractors and for the enforcement of the criminal provisions of this chapter. In addition, the security division shall develop a security plan to be implemented by the lottery. The lottery's security division is herein designated as an Idaho law enforcement agency. The director of security has the authority to:

- (1) Issue administrative subpoenas during the conduct of investigations in accordance with commission rules and this chapter;
- (2) Require fingerprint-based criminal history check of the Idaho central database and the federal bureau of investigation's criminal history database on prospective employees, vendors, contractors, lottery retailers and bingo and raffle operators; and
- (3) Access criminal offender record information from the Idaho state police for the purpose of background or other investigations performed in accordance with this chapter.

Such information obtained and kept by the security director shall be subject to disclosure according to chapter 1, title 74, Idaho Code. Nothing herein shall prohibit the lottery from disclosing information obtained by it to law enforcement agencies or other lottery organizations for security or enforcement purposes.

History.

I.C., § 67-7410, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 4, p. 879; am. 1990, ch. 213, § 98, p. 480; am. 2000, ch. 469, § 140, p. 1450; am. 2001, ch. 196, § 2, p. 663; am. 2008, ch. 40, § 1, p. 95; am. 2015, ch. 141, § 183, p. 379.

STATUTORY NOTES

Cross References.

Idaho state police, § 67-2901 et seq.

Amendments.

The 2008 amendment, by ch. 40, rewrote subsection (2), which formerly read: “Require fingerprint and background checks of prospective employees and contractors.”

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the last paragraph.

Compiler’s Notes.

For further information on the central repository of criminal history information, maintained by the Idaho state police, referred to in subsection (2), see <https://isp.idaho.gov/bci/criminal-history>.

The federal bureau of investigation criminal history database, referred to in subsection (2), is the integrated automated fingerprint identification system (IAFIS), maintained by the criminal justice information services division of the federal bureau of investigation. In 2011, the IAFIS was replaced by Next Generation Identification. See <https://www.fbi.gov/services/cjis/fingerprints-and-other-bio-metrics/ngi>.

§ 67-7411. Contracting with lottery game retailers. — The commission shall promulgate rules and regulations specifying the terms and conditions for contracting with lottery game retailers to provide availability of tickets or shares to prospective buyers of each lottery game.

A lottery game retailer contract shall not be entered into if there is substantial evidence that the prospective lottery game retailer has had a license or contract to sell lottery tickets or shares suspended or revoked in another state or jurisdiction, or has knowingly made a false statement of material fact to the lottery.

History.

I.C., § 67-7411, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7412. Selection of lottery game retailers. — The director, pursuant to rule, shall select as lottery game retailers such persons as are deemed best to serve the public convenience and to promote the sale of tickets or shares. No natural person under the age of eighteen (18) shall be a lottery game retailer. In the selection of a lottery game retailer, the director shall consider factors such as financial responsibility, accessibility of the place of business or activity to the public, security of the premises, integrity, reputation, the sufficiency of existing lottery game retailers to serve the public convenience and the projected volume of sales for the lottery game involved.

Prior to the execution of any contract with a lottery game retailer, the director may require a prospective lottery game retailer to disclose to the lottery the lottery game retailer's name and address and the names and addresses of the following:

(1) If the prospective lottery game retailer is a corporation, the officers, directors, and each stockholder in such corporation; except that, in the case of stockholders of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own five percent (5%) or more of such securities need be disclosed;

(2) If the prospective lottery game retailer is a trust, the trustee and all persons entitled to receive income or benefit from the trust;

(3) If the prospective lottery game retailer is an association, the members, officers, and directors;

(4) If the prospective lottery game retailer is a subsidiary, the officers, directors and each stockholder of the parent corporation thereof; except that, in the case of stockholders of a publicly traded corporation, only the names and addresses of those known to the corporation to own five percent (5%) or more of such securities need be disclosed;

(5) If the prospective lottery game retailer is a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

(6) If the parent company, general partner, limited partner, or joint venturer of any prospective lottery game retailer is itself a corporation,

trust, association, subsidiary, partnership, or joint venture, then all of the information required herein shall be disclosed for such other entity as if it were itself a prospective lottery game retailer to the end that full disclosure of ultimate ownership be achieved;

(7) If any member of the immediate family of any prospective lottery game retailer is involved in the lottery game retailer's business in any capacity, then all of the information required herein shall be disclosed for such immediate family member as if such immediate family member were a prospective lottery game retailer;

(8) The details of any felony conviction of a criminal offense, state or federal, of the retailer or any person whose name and address are required by the disclosure requirements of this section; and

(9) The details of any disciplinary action of a judicial nature taken by any state against the retailer or any person whose name and address are required by this section regarding any matter related to the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment.

No person shall be a lottery game retailer who is engaged exclusively in the business of selling lottery tickets or shares. The director may contract with lottery game retailers on a permanent, seasonal or temporary basis. The lottery may require payment by each lottery game retailer to the lottery of an initial fee and an annual fee as a condition for a contract to be a lottery game retailer. The authority to act as a lottery game retailer shall not be assignable or transferable. A lottery game retailer shall report immediately to the lottery any changes in the information required in this section.

History.

I.C., § 67-7412, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 5, p. 879.

§ 67-7413. Termination of the lottery game retailer. — The director may terminate a contract with a lottery game retailer for such reasons of termination as shall be recited in such contract, which reasons shall include, but not be limited to, the knowing sale of tickets or shares to any person under the age of eighteen (18).

History.

I.C., § 67-7413, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7414. Compensation for lottery game retailers. — The compensation paid to lottery game retailers shall be five percent (5%) of the retail price of the tickets or shares. The director may pay lottery game retailers an additional one percent (1%) incentive bonus based on attainment of sales volume or other objectives specified by the director for each lottery game.

History.

I.C., § 67-7414, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7415. Sales to persons under the age of eighteen. — No tickets or shares in the lottery games shall be sold by or to persons under the age of eighteen (18). In the case of lottery tickets or shares sold by lottery game retailers or their employees, such persons shall establish safeguards to help assure that such sales are not made to natural persons under the age of eighteen (18).

History.

I.C., § 67-7415, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7416. Display of certificate of authority. — No lottery tickets or shares shall be sold by a lottery game retailer unless the retailer has on public display on the premises a certificate of authority to sell lottery tickets or shares signed by the director.

History.

I.C., § 67-7416, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7417. Lottery game retailer bonding. — Under rules and regulations adopted by the commission, the director may require an appropriate bond from any lottery game retailer or may purchase blanket bonds covering the activities of selected lottery game retailers.

History.

I.C., § 67-7417, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 6, p. 879.

§ 67-7418. Lottery game retailer accounting. — Under rules and regulations adopted by the commission, the director shall establish procedures which shall be utilized by lottery game retailers to account for all tickets or shares that are sold to the public by each lottery game retailer and to account for all funds received from the public by each lottery game retailer for the tickets or shares.

History.

I.C., § 67-7418, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 7, p. 879.

§ 67-7419. Lottery game retailer payments. — No payment by lottery game retailers to the state lottery for tickets or shares shall be in cash. All such payments shall be in the form of a check, bank draft, electronic fund transfer, or other recorded financial instrument as prescribed by commission rule. The director may require lottery game retailers to deposit to the credit of the state lottery, in financial institutions designated by the director, money received by lottery game retailers from sale of tickets and/or shares, less the amount of compensation, if any, authorized under section 67-7414, Idaho Code, and to file with the state lottery reports of receipts and transactions in the sale of tickets in the form and containing the information the commission requires.

History.

I.C., § 67-7419, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 8, p. 879.

§ 67-7420. Contracts for major procurements. — Subject to the approval of the commission, the director may solicit bids and enter into major procurement contracts. Any such contract may be awarded to a technically competent bidder, taking into account the lowest bid, secondary cost benefits and the resulting projected net income which would accrue to the benefit of the state over the term of the contract.

In all awards of contracts, the commission shall take particular account of the sensitive and responsible nature of the state lottery and the paramount consideration of security and integrity.

History.

I.C., § 67-7420, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 9, p. 879.

§ 67-7421. Lottery vendor disclosures for major procurements. —

This section is provided to allow the commission to evaluate the competence, integrity, background, character and the nature of the true ownership and control of lottery vendors. The commission may require any person, as a part of a major procurement, to disclose at the time of submitting such bid, proposal or offer to the commission the following information:

(1) If the vendor is a partnership or joint venture, the names and addresses of all of the general and limited partners or joint venturers; if such general and limited partners or joint venturers are themselves a partnership, joint venture, trust, association, corporation, subsidiary, or intermediary corporation, the same information required by this section shall be supplied for such entities also;

(2) If the vendor is a trust, the names and addresses of the trustee and all persons entitled to receive income or benefit of the trust;

(3) If the vendor is an association, the names and addresses of the members, officers and directors;

(4) If the vendor is a corporation, the names and addresses of the officers, directors and each owner or holder, directly or indirectly, of any equity security or other evidence of ownership of any interest in such corporation; except that, in the case of owners or holders of publicly held securities of an intermediary company, holding company, or parent company that is a publicly traded corporation, only the names and addresses of those owning or holding five percent (5%) or more of such publicly held securities need be disclosed;

(5) If the vendor intends to or does subcontract to another person or entity any integral or substantial portion of the work to be performed in supplying such materials, equipment or services, then the vendor shall supply the information required by subparagraphs in this section for all such persons or entities;

(6) If the vendor is a corporation, the names of all the states in which the vendor is incorporated to do business, and the nature of that business;

(7) The names of other jurisdictions in which the vendor has contracts to supply gaming materials, equipment or services and the types of gaming materials, equipment or services involved therewith;

(8) The details of any felony conviction of a criminal offense, state or federal, of the vendor or any person whose name and address are required by the disclosure requirements of this section;

(9) The details of any disciplinary action of a judicial nature taken by any state against the vendor or any person whose name and address are required by this section regarding any matter related to the selling, leasing, offering for sale or lease, buying, or servicing of gaming materials or equipment;

(10) Audited financial statements for the most recent five (5) years and a statement of the gross receipts realized in the preceding year from the sale, lease or distribution of gaming materials, equipment or services. This information shall be subject to disclosure according to chapter 1, title 74, Idaho Code;

(11) The name and address of any source of game materials, equipment or services for the vendor; and

(12) Such other information, accompanied by such documents, as the commission, by rule, regulation or contract procurement documents, may require as being necessary or appropriate in the public interest to accomplish the purposes of this section.

A major procurement contractor shall report immediately any changes in the information required in this section.

History.

I.C., § 67-7421, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 10, p. 879; am. 1990, ch. 213, § 99, p. 480; am. 2015, ch. 141, § 184, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in subsection (10).

§ 67-7422. Separation of vendors and retailers. — No person, firm, association or corporation contracting as a vendor to supply lottery equipment or materials to the state for use in the operation of the lottery shall be directly or indirectly connected with any person, firm, association or corporation selected as retailers.

History.

I.C., § 67-7422, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 11, p. 879.

§ 67-7423. Enforceability of contracts. — No contract with any contractor, retailer or vendor who has not complied with the disclosure requirements established by the commission, shall be entered into or be enforceable.

History.

I.C., § 67-7423, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 12, p. 879.

§ 67-7424. Information under oath. — The information required by the commission of prospective contractors, retailers and vendors shall be provided under oath.

History.

I.C., § 67-7424, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 13, p. 879.

§ 67-7425. Misstatements or omissions. — Any person wilfully making a material misstatement or material omission of any disclosure item required by the commission shall be guilty of a felony.

History.

I.C., § 67-7425, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 14, p. 879.

STATUTORY NOTES

Cross References.

Punishment for felony when not otherwise provided, § 18-112.

§ 67-7426. Compliance with applicable laws. — Each lottery contractor, retailer and vendor shall perform its contract consistent with the applicable rules of the commission, the laws of this state, federal laws, and the laws of the state or jurisdiction in which the lottery contractor, retailer or vendor is performing or producing, in whole or in part, any of the goods or services contracted for hereunder. No contract with any lottery contractor, retailer or vendor who fails to comply with such laws or rules shall be entered into or be enforceable.

History.

I.C., § 67-7426, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 15, p. 879.

§ 67-7427. Vendor performance bonds. — Each vendor, at the time of executing a contract, shall post a performance bond in a manner and form as required by the commission. The commission may accept other security in lieu of a bond when in its judgment the security is sufficient to guarantee the faithful performance of the contract.

History.

I.C., § 67-7427, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 16, p. 879.

§ 67-7428. State lottery account. — There is hereby created in the dedicated fund of the state treasury, the state lottery account. The state lottery account is continuously appropriated to the state lottery for the purposes of operating the lottery and fulfilling its objectives.

History.

I.C., § 67-7428, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7429. Prohibition on use of state funds. — It is the intent of this chapter that the state lottery, established by this chapter, shall be a self-supporting, revenue raising agency of state government. No appropriations, loans, or other transfer of state funds shall be made to the state lottery, except for the temporary line of credit for initial start-up costs of the lottery, as provided in this chapter.

History.

I.C., § 67-7429, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7430. Temporary line of credit for start-up costs. [Repealed.]

Repealed by S.L. 2011, ch. 141, § 1, effective July 1, 2011.

History.

I.C., § 67-7430, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 17, p. 879.

§ 67-7431. Cash receipts. — The following moneys shall be deposited in the state lottery account, as established under section 67-7428, Idaho Code:

(1) All moneys received from the sale of lottery tickets or shares; and (2) Any other moneys received by the lottery from whatever source.

History.

I.C., § 67-7431, as added by 1988, ch. 232, § 2, p. 446; am. 2011, ch. 141, § 2, p. 400.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 141, deleted former subsection (2), which read: “Funds drawn against the temporary line of credit, as established under **section 67-7430, Idaho Code**,” and redesignated former subsection (3) as present subsection (2).

§ 67-7432. Cash disbursements. — The director is authorized to make the following disbursements from the state lottery account:

(1) Payment of prizes directly to the holder of valid winning tickets or shares; (2) Purchase of annuities or investments to be utilized to pay future installments of winning tickets or shares; (3) Refunds, if any, due to lottery retailers or players; (4) Expenses of the lottery; (5) Payments to an Indian tribe pursuant to a state-tribal gaming compact negotiated pursuant to [section 67-429A, Idaho Code](#); (6) The payment of the lottery's obligations, including the purchase of property, buildings and equipment; and (7) The payment of dividends, as provided for under [section 67-7434, Idaho Code](#).

History.

[I.C., § 67-7432](#), as added by 1988, ch. 232, § 2, p. 446; am. 1997, ch. 178, § 1, p. 496; am. 2011, ch. 141, § 3, p. 400.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 141, rewrote subsection (6), which formerly read: “The payment of the lottery's obligations, including the funds advanced under the temporary line of credit, as provided for under [section 67-7430, Idaho Code](#).”

Effective Dates.

Section 2 of S.L. 1997, ch. 178 declared an emergency. Approved March 19, 1997.

§ 67-7433. Prize expense. — Total prize expense, net of unclaimed prizes, as determined on an annual basis, shall be no less than forty-five percent (45%) of lottery revenues.

History.

I.C., § 67-7433, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 18, p. 879; am. 2011, ch. 141, § 4, p. 400.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 141, deleted the former last sentence, which read: “In addition, low tier claims, if any, that are to be paid by the selling lottery game retailer and are not claimed, shall be construed to be a prize expense and shall inure to the benefit of the selling lottery retailer.”

§ 67-7434. Lottery dividends. — (1) Annually, on July 1, the lottery shall transfer three-eighths ($3/8$) of its net income to the permanent building account [permanent building fund]; three-eighths ($3/8$) of its net income to the school district building account; and one-fourth ($1/4$) of its net income to the bond levy equalization fund after reserving sufficient moneys to ensure the continuation of the lottery, as determined by the director and commission.

(2) The lottery shall ensure that the distributions made to the permanent building account [permanent building fund] and the school district building account, pursuant to the provisions of subsection (1) of this section, shall not be less than the amount those accounts received for fiscal year 2008, provided funds are available at the fiscal year 2008 level. Provided however, in the event the level of available funds is less than the fiscal year 2008 level, one-half ($1/2$) of the available funds shall be transferred to the permanent building account [permanent building fund] and one-half ($1/2$) of the available funds shall be transferred to the school district building account.

(3) In the event the lottery determines that an adjustment to an annual transfer as provided in subsection (1) of this section must be made pursuant to the provisions of subsection (2) of this section, the difference shall be deducted from the one-fourth ($1/4$) net income transfer that was to be made to the bond levy equalization fund, and the bond levy equalization fund shall receive the remainder, if any.

History.

I.C., § 67-7434, as added by 1988, ch. 232, § 2, p. 446; am. 1990, ch. 377, §§ 3, 6, p. 1041; am. 1991, ch. 110, § 4, p. 235; am. 2009, ch. 344, § 1, p. 1078; am. 2014, ch. 337, § 1, p. 834.

STATUTORY NOTES

Cross References.

Bond levy equalization fund, § 33-906A.

School district building account, § 33-905.

Amendments.

The 2009 amendment, by ch. 344, added the subsection (1) designation, and therein deleted the last paragraph, which read: “A one (1) time allotment of two hundred thousand dollars (\$200,000) of the lottery’s first year dividends shall be allocated and used by the permanent building fund advisory council for the construction of a Vietnam veterans memorial in the state”; and added subsection (2).

The 2014 amendment, by ch. 337, § 1, deleted former subsections (1) and (2), relating to the distribution of net income, and redesignated former paragraphs (2)(a) through (2)(c) as present subsections (1) through (3); and deleted former paragraph (2)(d) which related to sunset provisions.

Compiler’s Notes.

Section 3 of S.L. 2014, chapter 337 repealed this section, effective July 1, 2019; at which time, section 5 of the same act enacted a new section § 67-7434. However, S.L. 2017, ch. 322, § 15 repealed both sections 3 and 5 of S.L. 2014, chapter 337, thereby cancelling the future revision of this section.

S.L. 2009, Chapter 344 became law without the signature of the governor.

The bracketed insertions in subsections (1) and (2) were inserted by the compiler to correct the name of the referenced fund. See § 57-1101.

Effective Dates.

Section 6 of S.L. 1991, ch. 110 declared an emergency and provided that § 1 [§ 33-905 note] should be in full force and effect March 27, 1991.

Section 7 of S.L. 1990, ch. 377, provided that “Sections 1, 2 and 3 of this act shall be in full force and effect on and after July 1, 1990. Sections 4, 5 and 6 of this act shall be in full force and effect on and after July 1, 1991.”

§ 67-7435. Reimbursements for government services. — It is the intent that the lottery shall be a self-supporting agency of state government. The director shall reimburse at a reasonable rate all other governmental entities for any and all services necessary to effectuate the purposes of this chapter provided by such governmental entities to the state lottery.

History.

I.C., § 67-7435, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 19, p. 879.

§ 67-7436. Audits. — A certified public accounting firm appointed by the commission shall conduct audits of all accounts and transactions of the state lottery. The director and his agents conducting an audit under this chapter shall have access and authority to examine any and all lottery-related records of lottery vendors and retailers. Such records shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

History.

I.C., § 67-7436, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 20, p. 879; am. 1990, ch. 213, § 100, p. 480; am. 2011, ch. 141, § 5, p. 400; am. 2015, ch. 141, § 185, p. 379.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 141, deleted the former last sentence, which read: “An independent certified public accountant, retained by the state lottery, shall witness all drawings of the state lottery.”

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the last sentence.

§ 67-7437. Prizes. — Except as otherwise provided in this section, any prize won under this chapter is not assignable. If the prize winner dies before the prize is paid, the prize shall be paid to the estate of the prize winner. A prize is subject to garnishment and recovery for unpaid taxes, child or spousal support or public assistance benefits paid and recoverable by the state or any county, or by a person pursuant to a judgment and execution under an order of the court. A prize shall also be subject to immediate withholding and set-off to collect any support delinquency or state taxes owed upon notification from the department of health and welfare pursuant to section 56-203E, Idaho Code, or the state tax commission pursuant to section 63-3060, Idaho Code. The state lottery shall not pay a prize claim until the lottery ticket or share has passed the validation tests established by the state lottery.

No prize shall be paid arising from claimed tickets or shares that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received or not recorded by the state lottery by applicable deadlines, lacking in captions that confirm and agree with the state lottery play symbols as appropriate to the game involved, or not in compliance with such additional specific rules and regulations and public or confidential validation and security tests of the state lottery appropriate to the particular lottery game involved. Confidential validation or security tests shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

No particular prize in any lottery game may be paid more than once, and in the event of a binding determination that more than one (1) claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them an equal share in the prize.

History.

I.C., § 67-7437, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 21, p. 879; am. 1990, ch. 153, § 1, p. 338; am. 1990, ch. 213, § 101, p. 480; am. 2013, ch. 250, § 2, p. 608; am. 2015, ch. 141, § 186, p. 379.

STATUTORY NOTES

Amendments.

This section was amended by two 1990 acts, ch. 153, § 1 and ch. 213, § 101, which appear compatible and have been compiled together.

The 1990 amendment, by ch. 153, § 1, in the third sentence of the first paragraph inserted “or spousal” before “support or public assistance” and added the fourth sentence of the first paragraph.

The 1990 amendment, by ch. 213, § 101, added the last sentence of the second paragraph.

The 2013 amendment, by ch. 250, rewrote the fourth sentence of the first paragraph, which formerly read, “A prize shall also be subject to withholding and set-off to collect any support delinquency upon notification from the department of health and welfare pursuant to [section 56-203E, Idaho Code](#).”

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” in the last sentence of the second paragraph.

§ 67-7438. Prize claiming period. — Prizes may be claimed for a period of one hundred and eighty (180) days after the drawing in which the prize was won or from the last day tickets from that specific game were sold. Prizes won through an electronic terminal shall be payable in accordance with rules and regulations of the commission. If a claim is not made for the prize within the applicable period, the prize money shall be added to future prize pools, to be used in addition to prize allotments already allocated, except as provided in section 67-7433, Idaho Code.

History.

I.C., § 67-7438, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 22, p. 879.

§ 67-7439. Taxes. — Income taxes shall only be imposed on lottery prizes received from lottery tickets purchased after the effective date of this act. Lottery prizes awarded by the Idaho state lottery under six hundred dollars (\$600) shall not be subject to the state income tax. No taxes of any kind whatsoever shall be imposed upon the sale, purchase, storage, use or other consumption of Idaho lottery tickets or shares, or upon equipment, devices or systems directly used in the production, operation, sales, distribution, tracking, drawing, accounting, communication of or computation of lottery games.

The state lottery shall pay to a city, county, the state or any political subdivision or municipality thereof in which the state lottery occupies a premises owned by the state a grant not to exceed the amount that would be payable as taxes on the property in that year, if the property were not exempt from taxation.

History.

I.C., § 67-7439, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 23, p. 879; am. 1997, ch. 382, § 2, p. 1237; am. 1998, ch. 51, § 5, p. 201.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 1997, ch. 382 read: “It is the purpose of this act to provide a source of funds for county juvenile probation services and for substance abuse programs in the public schools. It is the Legislature’s intent that the schools and county juvenile probation services establish substance abuse programs which will be available to youth through the schools or county juvenile probation services. It is not the intent of the Legislature to prohibit county juvenile probation services from utilizing their share of these funds to perform their other responsibilities under the Juvenile Corrections Act of 1995. The youth of Idaho will be best served in their communities through the combined efforts of public school administrators and county juvenile probation officers to provide an integrated system of

programs designed to meet the needs of youth with substance abuse problems and those requiring juvenile probationary services. It is the Legislature's intent that the schools and county juvenile probation services act in concert to deliver services to affected youth in the most efficient manner and avoid duplication and competition of programs. It is the Legislature's further intent that all the funds available for distribution as a result of state income taxes imposed on lottery prizes be appropriated equally to the public school income fund and county juvenile probation services in accordance with the formula provided in [Section 63-3067, Idaho Code](#), if maximal use is being made of these funds to address the needs of youth in their communities."

Compiler's Notes.

The phrase "the effective date of this act" in the first sentence in the first paragraph refers to the effective date of S.L. 1997, Chapter 383, which was effective January 1, 1998.

Effective Dates.

Section 4 of S.L. 1997, ch. 382 provided that the act should take effect on and after January 1, 1998.

Section 6 of S.L. 1998, ch. 51 declared an emergency and provided that this act shall be in full force and effect on and after its passage and approval, and retroactively to January 1, 1998. Approved March 17, 1998.

§ 67-7440. Restricted players. — No lottery ticket or share may be purchased by, and no prize may be paid to, any of the following persons:

- (1) Any member of the commission or employee of the state lottery; or
- (2) Any owner, or in the case of a corporation, an owner of five percent (5%) or more of the corporation stock, any officer or employee of a company that is currently under contract to provide a major procurement; or
- (3) Any other person doing business with the state lottery as may be determined by commission rule; or
- (4) Any person related by blood, adoption or marriage and who is a member of the same household as any member of the commission or employee of the state lottery.

Notwithstanding the above, any of the above may purchase a lottery ticket or share and attempt to claim the related prize provided the purpose of such purchase or claim is to test the lottery's systems or is related to an investigation and is approved in advance by the director of security. If a ticket or share is claimed in such a test or investigation, the warrant must be returned to the state lottery without being cashed.

History.

I.C., § 67-7440, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 24, p. 879.

§ 67-7441. Records. — All papers, records, correspondence, communications and proceedings of the Idaho state lottery and the commission shall be open to the public except as otherwise provided by statute; provided, however, that business records and information provided to the state lottery pursuant to sections 67-7412(8) and (9) and 67-7421(8) and (9), Idaho Code, shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

No lottery employee shall divulge or make known to any person in any manner any information which is exempt from disclosure, whatsoever, obtained directly or indirectly by him in the discharge of his duties, or permit any copy thereof to be seen. Any employee violating provisions of this section shall be guilty of a misdemeanor.

History.

I.C., § 67-7441, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 25, p. 879; am. 1990, ch. 213, § 102, p. 480; am. 2015, ch. 141, § 187, p. 379; am. 2016, ch. 47, § 44, p. 98.

STATUTORY NOTES

Cross References.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” at the end of the first paragraph.

The 2016 amendment, by ch. 47, substituted “67-7421(8) and (9)” for “67-7420(8) and (9)” in the first paragraph.

§ 67-7442. Open public meetings of the commission. — All meetings of the commission shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by law; provided, however, that the commission may meet in executive session to:

(1) Evaluate the confidential proprietary information provided as part of a major procurement proposal of a vendor, retailer or contractor; or

(2) Hear security and investigative information and recommendations brought before it by the director and director of security.

No executive session shall be held for the purpose of taking any final action or making any final decision.

History.

I.C., § 67-7442, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 26, p. 879.

§ 67-7443. Conflict of interest. — Members of the commission, the director, and the employees of the lottery shall not directly or indirectly, individually, or as a member of a partnership, or as a shareholder of a corporation, or as a participant in a joint venture or association with any other person, have an interest in dealing in a lottery or in the ownership or leasing of property used by or for a lottery. Any member of the commission or lottery employee who violates the provisions of this section shall be immediately removed from any position with the lottery.

History.

I.C., § 67-7443, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7444. Limitation on actions. — The commission, the director and employees of the lottery shall not be personally liable for anything done or omitted to be done in good faith in the exercise or purported exercise of powers conferred under this chapter.

History.

I.C., § 67-7444, as added by 1988, ch. 232, § 2, p. 446.

RESEARCH REFERENCES

ALR. — State lotteries: Actions by ticketholders or other claimants against state or contractor for state. 48 A.L.R.6th 243.

§ 67-7445. Conditions of purchase. — By purchasing a ticket or share in a lottery game, a player agrees to abide by, and be bound by, the commission's rules and regulations and by lottery game rules developed by the commission to apply to any particular lottery game involved. In particular, and without limitation, the player acknowledges, that the determination of whether the player is a valid winner is subject to winner validation procedures and confidential validation and security tests established by the state lottery for the particular lottery game. Confidential validation and security tests shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

History.

I.C., § 67-7445, as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 27, p. 879; am. 1990, ch. 213, § 103, p. 480; am. 2015, ch. 141, § 188, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 1, title 74” for “chapter 3, title 9” at the end of the section.

Effective Dates.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993, and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

§ 67-7446. Restrictions. — Notwithstanding the provisions of section 23-928, Idaho Code, nothing in that section shall be construed to authorize any form of games of chance or private lotteries, except as may be authorized expressly by this chapter in accordance with the Idaho Constitution.

History.

I.C., § 67-7446, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7447. Lawful activity. — Chapters 38 and 49, Title 18, Idaho Code, or any other state or local law or regulation providing any penalty, disability, restriction, regulation or prohibition for the manufacture, transportation, storage, distribution, advertising, possession, or sale of any lottery tickets or shares or for the operation of any lottery game shall not apply to the tickets or shares of the state lottery established in this chapter.

History.

I.C., § 67-7447, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7448. Prohibited acts — Penalties. — (1) Any person may provide gift tickets or shares. With the approval of the commission, the director or a lottery retailer may provide gift tickets for promotional purposes which are approved by the commission. A ticket or share shall not be sold at a price greater than that fixed by the state lottery, and a sale shall not be made other than by a lottery game retailer or by an employee of a lottery game retailer who is authorized by the license to sell tickets.

A person may not sell a lottery ticket or share to any person under the age of eighteen (18) years. A minor may not purchase lottery tickets or shares and may not redeem winning tickets or shares.

A lottery retailer may not willfully withhold funds due and owing to the state lottery. A person may not impersonate a state lottery representative.

Any person violating any of the provisions of this chapter except as provided in subsection (2) of this section shall be guilty of a misdemeanor and upon conviction be fined up to five thousand dollars (\$5,000) or imprisoned up to six (6) months or be both so fined and imprisoned.

(2) A person shall be guilty of a felony if he knowingly presents a counterfeit, previously paid, illegally obtained or altered state lottery ticket or share for payment or knowingly transfers a counterfeit, previously paid, illegally obtained or altered state lottery ticket or share to another person for presentation for payment or with intent to defraud, falsely make, alter, forge, pass or counterfeit a lottery ticket or share. A person violating the provisions of this subsection shall be punished by imprisonment not in excess of five (5) years, a fine not in excess of twenty-five thousand dollars (\$25,000) or both such fine and imprisonment.

(3) Determination of loss. The value of a loss involving the theft of lottery tickets shall be the face value of the tickets plus the redemption value as defined in [section 67-7404, Idaho Code](#).

History.

[I.C., § 67-7448](#), as added by 1988, ch. 232, § 2, p. 446; am. 1989, ch. 352, § 28, p. 879; am. 2001, ch. 196, § 3, p. 663.

§ 67-7449. Cap on administrative costs. — During the first year of operation, administrative costs shall not exceed twenty percent (20%) of lottery revenue. Thereafter, administrative costs shall not exceed fifteen percent (15%) of lottery revenue during any fiscal year. Advertising and promotional costs shall not exceed three and one-half percent (3 1/2%) of lottery revenue during any fiscal year.

History.

I.C., § 67-7449, as added by 1988, ch. 232, § 2, p. 446.

§ 67-7450. Audit of funds — Reports. — (1) The right is reserved to the state of Idaho to audit funds of the commission at any time.

(2) On or before January 15 of each year, the director shall file with the senate state affairs committee, the house state affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the commission during the preceding fiscal year. The report shall also include an estimate of income to the commission for the current and next fiscal years and a projection of anticipated expenses by category for the current and next fiscal years. From and after January 15, 1990, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(3) In addition to the reports required in subsection (2) of this section, the director shall also file the same report with the joint finance-appropriations committee. Notwithstanding any other provision of this chapter, the joint finance-appropriations committee may, by appropriation measure, limit or modify proposed expenditures of the commission.

History.

I.C., § 67-7450, as added by 1989, ch. 352, § 30, p. 879; am. 1993, ch. 327, § 37, p. 1186; am. 1994, ch. 180, § 232, p. 420; am. 1996, ch. 159, § 26, p. 502.

STATUTORY NOTES

Cross References.

Division of financial management, § 67-1910.

Legislative services office, § 67-701 et seq.

State controller, § 67-101 et seq.

Prior Laws.

Former § 67-7450, which comprised I.C., § 67-7450, as added by 1988, ch. 232, § 2, p. 446, was repealed by S.L. 1989, ch. 352, § 29.

Effective Dates.

Section 31 of S.L. 1989, ch. 352 declared an emergency. Approved April 5, 1989.

Section 241 of S.L. 1994, ch. 180 provided: “This act shall be in full force and effect on and after the first Monday of January, 1995, if the state board of canvassers has certified that an amendment to the Constitution of the State of Idaho has been adopted at the general election of 1994 to change the name of the state auditor to state controller.”

The amendment to the constitution was adopted at the general election of November 8, 1994, and the amendment of this section by S.L. 1994, ch. 180, § 232 was effective January 2, 1995..

§ 67-7451. Lottery exempt from state procurement act. — Notwithstanding any other provision of law to the contrary, the state lottery shall be exempt from the state procurement act provided in chapter 92, title 67, Idaho Code.

History.

I.C., § 67-7451, as added by 1988, ch. 232, § 2, p. 446; am. 2016, ch. 289, § 19, p. 793.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 289, substituted “procurement act” for “purchasing laws” in the section heading; and substituted “state procurement act provided in chapter 92, title 67” for “purchasing laws for state agencies provided in chapter 57, title 67”.

§ 67-7452. Severability. — If any of the provisions of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

History.

I.C., § 67-7452, as added by 1988, ch. 232, § 2, p. 446.

STATUTORY NOTES

Effective Dates.

Section 3 of S.L. 1988, ch. 232 read: “This act shall be in full force and effect on and after the date of adoption of House Joint Resolution No. 3, First Regular Session, Forty-ninth Idaho Legislature [S.L. 1987, p. 801], by the electorate of the State of Idaho as required by law.” House Joint Resolution No. 3, First Regular Session, Forty-ninth Idaho Legislature [S.L. 1987, p. 801] which proposed an amendment to the Idaho **Constitution Article III, § 20** was adopted by the electorate of the State of Idaho at the general election held November 8, 1988.

Idaho Code Ch. 75

• [Title 67](#) •, « [Ch. 75](#) »

Chapter 75

MARINE SEWAGE DISPOSAL ACT

Sec.

67-7501. Legislative intent.

67-7502. Jurisdiction and authority.

67-7503. Definitions.

67-7504. Marine sanitation devices.

67-7505. Prohibition against discharge of sewage or other wastes.

67-7506. Enforcement.

67-7507. Penalties.

67-7508. Disposition of fines.

67-7509. Severability.

§ 67-7501. Legislative intent. — The legislature finds that the waters of Idaho streams, rivers and lakes are threatened with pollution from discharge of marine sewage and other wastes; that it is necessary to provide a uniform system for control and treatment of such marine sewage, graywater and other wastes; and that violators should be penalized.

History.

I.C., § 67-7501, as added by 1989, ch. 365, § 1, p. 912.

§ 67-7502. Jurisdiction and authority. — This chapter shall apply to all vessels on the waters of and over which the state of Idaho shall have jurisdiction. The department of environmental quality is hereby granted authority to carry out the administration of the provisions of this chapter, and to promulgate rules in compliance with chapter 52, title 67, Idaho Code, to effectuate that purpose.

History.

I.C., § 67-7502, as added by 1989, ch. 365, § 1, p. 912; am. 2001, ch. 103, § 102, p. 252.

STATUTORY NOTES

Cross References.

Department of environmental quality, § 39-104.

§ 67-7503. Definitions. — As used in this chapter:

(1) “Discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(2) “Enforcement officer” means all persons designated as peace officers and authorized special deputies under Idaho law.

(3) “Manufacturer” means any person engaged in manufacturing, assembling, or importing of marine sanitation devices or of vessels subject to the standards and regulations promulgated under the federal water pollution control act, as amended.

(4) “Marine sanitation device” and “device” means any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage.

(5) “Other wastes” include, but are not limited to, garbage, refuse, wood debris, oil, tar, and other “pollutants” as defined in the federal water pollution control act, as amended.

(6) “Owner” means any person having a property interest in or entitled to the use or possession of a vessel, including a person entitled to use or possession subject to the interest in another person reserved or created by agreement and securing payment of performance of an obligation, but not including a lessee under lease not intended as security.

(7) “Person” means an individual, partnership, firm, corporation or association, but does not include an individual on board a public vessel.

(8) “Public vessel” means a vessel owned or bareboat chartered and operated by the United States, by a state or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce.

(9) “Sewage” means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes.

(10) “Vessel” shall include every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the waters of the state of Idaho.

(11) “Waters of this state” mean any waters in the state of Idaho over which the state has jurisdiction.

History.

I.C., § 67-7503, as added by 1989, ch. 365, § 1, p. 912.

STATUTORY NOTES

Federal References.

The federal water pollution control act, referred to in subsections (3) and (5), is codified as 33 U.S.C.S. § 1251 et seq.

§ 67-7504. Marine sanitation devices. — (1) No manufacturer may sell, offer for sale, or distribute for sale or resale any vessel equipped with an installed marine sanitation device unless the device is operable, labeled and certified as provided by federal law.

(2) No owner may have a vessel on the waters of this state, and no person may operate any vessel on the waters of this state, equipped with an installed marine sanitation device unless the device is operable, labeled and certified as provided by federal law.

History.

I.C., § 67-7504, as added by 1989, ch. 365, § 1, p. 912.

§ 67-7505. Prohibition against discharge of sewage or other wastes.

— (1) Except as provided by federal law, no person shall discharge or otherwise dispose of any sewage or other wastes from any vessel into or upon the waters of this state.

(2) When a vessel with an installed device is in an area where the discharge of sewage is prohibited, the device must be sealed to prevent overboard discharge.

History.

I.C., § 67-7505, as added by 1989, ch. 365, § 1, p. 912.

§ 67-7506. Enforcement. — Any enforcement officer may stop and board any vessel, except public vessels, on the waters of this state for the purpose of inspecting a marine sanitation device or to enforce the provisions of this chapter.

History.

I.C., § 67-7506, as added by 1989, ch. 365, § 1, p. 912.

§ 67-7507. Penalties. — (1) It shall be unlawful and constitute a misdemeanor for any person to violate any provisions of this chapter.

(2) Every person convicted of a violation of any provision of this chapter shall be punished by a fine of not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300) for each offense or by imprisonment for not more than six (6) months or by both such fine and imprisonment.

History.

I.C., § 67-7507, as added by 1989, ch. 365, § 1, p. 912.

§ 67-7508. Disposition of fines. — Notwithstanding the provisions of section 19-4705, Idaho Code, to the contrary, fines remitted for violations of this chapter shall be apportioned ten per cent (10%) to the state treasurer for deposit in the general account [general fund], twenty-two and one-half per cent (22 1/2%) to the district court fund and sixty-seven and one-half per cent (67 1/2%) to the sheriff of the county in which the violation occurred to be used to enforce boating and other water related laws.

History.

I.C., § 67-7508, as added by 1989, ch. 365, § 1, p. 912.

STATUTORY NOTES

Cross References.

District court fund, § 31-867.

State treasurer, § 67-1201 et seq.

Compiler's Notes.

The bracketed insertion near the middle of the section was added by the compiler to correct the name of the referenced fund. See § 67-1205.

§ 67-7509. Severability. — The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act.

History.

I.C., § 67-7509, as added by 1989, ch. 365, § 1, p. 912.

STATUTORY NOTES

Compiler's Notes.

The term “this act” refers to S.L. 1989, Chapter 365, which is compiled as §§ 67-7501 to 67-7509.

Chapter 76

IDAHO HERITAGE TRUST

Sec.

67-7601, 67-7602. [Null and void.]

67-7602A. Heritage resources.

67-7602B. Funding.

67-7603. [Null and void.]

67-7604. [Repealed.]

§ 67-7601, 67-7602. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 1990, ch. 129 as amended by S.L. 1992, ch. 256, § 5, as further amended by S.L. 1994, ch. 125, § 1, provided: "This act [enacting §§ 67-7601 and 67-7602] shall be in full force and effect on and after July 3, 1990, but shall be null, void and of no force and effect on and after July 3, 1996."

§ 67-7602A. Heritage resources. — A heritage resource is a diverse range of historic, cultural and archaeological resources including, but not limited to, buildings with appurtenant land, sites, districts, artifacts, objects, manuscripts and published documents, and the remains of ethnic and regional folklife having local, regional, state or national significance.

History.

I.C., § 67-7602A, as added by 1992, ch. 256, § 2.

§ 67-7602B. Funding. — The Idaho heritage trust shall receive funds collected in section 49-450, Idaho Code, in the amount of fifty cents (50¢) per plate for the use of the copyrighted design provided in section 49-443(10) [49-443(1)], Idaho Code. The Idaho transportation department shall collect such funds and distribute them to the Idaho heritage trust fund quarterly. The role of the heritage trust is to accept proposals from the public requesting funds for heritage preservation projects. The proposals are evaluated on established criteria, and if in the opinion of the heritage trust they qualify, a grant may be awarded subject to the availability of funds. The heritage trust shall insure that the following occurs in respect to the management of funds:

(1) Funds earned from the use of the motor vehicle license plate design shall be deposited directly into the trust fund where it will earn interest that will be used for heritage preservation projects. Contributions from private fund raising efforts may also be deposited to the trust fund.

(2) Only the interest earned from the trust fund shall be expended, and the trust fund shall remain as a permanent endowment generating income in perpetuity for heritage preservation.

(3) The Idaho heritage trust shall require project sponsors to match the funds granted for each project, so that no more than half the monetary support for any project shall come from the proceeds of the trust fund.

History.

I.C., § 67-7602B, as added by 1992, ch. 256, § 3.

STATUTORY NOTES

Cross References.

Idaho transportation department, § 40-501 et seq.

Compiler's Notes.

The bracketed insertion in the first sentence in the first paragraph was added by the compiler to correct the citation in the enacting legislation,

made incorrect by the 1992 repeal and reenactment of § 49-443.

§ 67-7603. [Null and void.]

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 1990, ch. 129 as amended by S.L. 1992, ch. 256, § 5, as further amended by S.L. 1994, ch. 125, § 1, provided: "This act [enacting § 67-7603] shall be in full force and effect on and after July 3, 1990, but shall be null, void and of no force and effect on and after July 3, 1996."

§ 67-7604. Annual audit. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-7604, as added by 1990, ch. 129, § 1, p. 299, was repealed by S.L. 1993, ch. 387, § 17, effective July 1, 1993.

Chapter 77

BINGO AND RAFFLES

Sec.

67-7701. Purpose and policy.

67-7702. Definitions.

67-7703. Bingo-raffle advisory board established.

67-7704. Bingo-raffle advisory board — Members — Appointment — Qualifications.

67-7705. Quorum — Meetings — Minutes — Compensation.

67-7706. Bingo-raffle advisory board — Powers — Duties.

67-7707. Bingo by charitable or nonprofit organizations.

67-7708. Limit on sessions and bingo prizes.

67-7709. Accounting and use of bingo proceeds.

67-7710. Raffles — Duck races.

67-7711. Licensing procedure.

67-7712. License fees — Suspension or revocation.

67-7713. Licensure requirements.

67-7714. Rules and forms.

67-7715. Vendors — Licensing — Fees.

67-7716. Electronic bingo device and site systems — Approval required.

67-7717. Manufacturing and distributing requirements.

67-7718. Licensed distributor requirements and duties.

67-7719. Licensed organizations — Use of electronic bingo devices.

§ 67-7701. Purpose and policy. — It is hereby declared that all bingo games and raffles in Idaho must be strictly controlled and administered, and it is in the public interest for the state to provide for the administration of charitable bingo games and raffles to protect the public from fraudulently conducted bingo games and raffles, to assure that charitable groups and institutions realize the profits from these games, to prohibit professionals conducting bingo games or raffles for fees or a percentage of the profit and to provide that all expenditures by a charitable or nonprofit organization in conducting bingo games and raffles are in the best interest of raising moneys for charitable purposes.

History.

I.C., § 67-7701, as added by 1993, ch. 391, § 2, p. 1448; am. 2013, ch. 251, § 1, p. 610.

STATUTORY NOTES

Cross References.

Gaming, § 18-3801 et seq.

Gambling prohibited — exceptions, Idaho Const., Art. III, § 20.

Prior Laws.

Former §§ 67-7701 to 67-7703, which comprised S.L. 1992 (1st Ex. Sess.), ch. 2, § 1, and became effective after the amendment proposed by HJR No. 4 [S.L. 1992 (1st Ex. Sess.), p. 8] to Idaho Const., Art. III, § 20 was adopted at the November, 1992 general election, were repealed by S.L. 1993, ch. 391, § 1.

Amendments.

The 2013 amendment, by ch. 251, inserted “or nonprofit” near the end of the section.

Effective Dates.

Section 3 of S.L. 1993, ch. 391, as amended by S.L. 1994, ch. 281, § 8 read: “An emergency existing therefor, which emergency is hereby declared

to exist, this act shall be in full force and effect on and after May 1, 1993.” Prior to the amendment by S.L. 1994, ch. 281, S.L. 1993, ch. 391 provided that the act would be null and void on and after July 1, 1994.

CASE NOTES

Accounting of Checks.

Idaho lottery commission did not abuse its discretion in determining that the nonprofit organizations failed to keep and account for all checks; instead of keeping or obtaining and producing the underlying records needed to fulfill the duty of scrutiny, the organizations told the commission to fetch the records at the commission’s expense. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm’n*, 144 Idaho 23, 156 P.3d 524 (2007).

§ 67-7702. Definitions. — As used in this chapter:

(1) “Bingo” means the traditional game of chance played for a prize determined prior to the start of the game.

(a) Upon approval by the bingo-raffle advisory board, a licensee may offer bingo games in which players are allowed to select their own numbers if the cards used to conduct the games have controls that provide an audit trail adequate to determine all winning number combinations.

(b) Card-minding devices are prohibited. Autodaubing features are prohibited.

(c) Bingo shall not include “instant bingo,” which is a game of chance played by the selection of one (1) or more prepackaged bingo cards, with the winner determined by the appearance of a preprinted winning designation on the bingo card.

(2) “Bingo-raffle advisory board” means a board of six (6) persons chosen by the governor to make advisory recommendations regarding bingo and raffle operations and regulation in Idaho.

(3) “Charitable organization” means an organization that has been in continuous existence in the county of operation of the charitable bingo game or raffle for at least one (1) year, that conducts charitable activities, and that is exempt from taxation under [section 501\(c\)\(3\), 501\(c\)\(4\), 501\(c\)\(6\), 501\(c\)\(8\), 501\(c\)\(10\), 501\(c\)\(19\) or 501\(d\) of the Internal Revenue Code](#) and is exempt from income taxation under title 63, Idaho Code, as a bona fide nonprofit charitable, civic, religious, fraternal, patriotic or veterans organization or as a nonprofit volunteer fire department, or as a nonprofit volunteer rescue squad, or as a nonprofit volunteer educational booster group, parent-teacher organization or association. If the organization has local branches or chapters, the term “charitable organization” means the local branch or chapter operating the bingo or raffle game.

(4) “Commission” means the Idaho state lottery commission as defined in [section 67-7404, Idaho Code](#).

(5) “Duck race” means a charitable raffle played by releasing numbered, inanimate toys (ducks) into a body of moving water. A person who has been assigned the same number as the first duck to cross a predetermined point in the water (the finish line) is the winner. Other prizes may be awarded on the basis of the order in which the ducks cross the finish line. With the exception of determining “net proceeds,” all restrictions and requirements applicable to the conduct of charitable raffles in this chapter shall also apply to the conduct of duck races.

(6) “Electronic bingo card” or “face” means an electronic facsimile of a bingo card or face, from a permutation of bingo cards formulated by a manufacturer licensed in Idaho, which is stored and/or displayed in a bingo card-monitoring device. An electronic bingo card or face is deemed to be a form of disposable paper bingo card.

(7)(a) “Electronic bingo device” means an electronic device used by a bingo player to monitor bingo cards purchased at the time and place of a licensed organization’s bingo session and that:

- (i) Provides a means for bingo players to input numbers announced by a bingo caller;

- (ii) Requires the player to manually enter the numbers as they are announced by a bingo caller;

- (iii) Compares the numbers entered by the bingo player to the numbers contained on bingo cards previously stored in the electronic database of the device;

- (iv) Identifies winning bingo patterns; and

- (v) Signals only the bingo player when a winning bingo pattern is achieved.

(b) “Electronic bingo device” does not mean or include any device into which coins, currency, or tokens are inserted to activate play, or any device that is interfaced with or connected to any host system which can transmit or receive any ball call information, site system or any other type of bingo equipment once the device has been activated for use by the bingo player.

(8) “Gross revenues” means all moneys paid by players during a bingo game or session for the playing of bingo or raffle events and does not include money paid for concessions; provided that the expenses of renting electronic bingo devices from a licensed vendor and the fees collected from players for the use of electronic bingo devices must be reported separately on the organization’s annual bingo report and must be netted for purposes of determining gross revenues as follows: only fees collected from players in excess of the rental charges paid to licensed vendors will be considered to be a part of gross revenues; and if the costs of renting electronic bingo devices from a licensed vendor exceed the fees collected from players for use of electronic bingo devices, the difference will be considered an administrative expense for purposes of [section 67-7709\(1\)\(d\), Idaho Code](#).

(9) “Host system” means the computer hardware, software and peripheral equipment of a licensed manufacturer that is used to generate and download electronic bingo cards to a licensed organization’s site system and that monitors sales and other activities of a site system.

(10) “Nonprofit organization” means an organization incorporated under chapter 30, title 30, Idaho Code.

(11) “Organization” means a charitable organization or a nonprofit organization.

(12) “Person” shall be construed to mean and include an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. “Person” shall also be construed to mean and include departments, commissions, agencies and instrumentalities of the state of Idaho, including counties and municipalities and agencies or instrumentalities thereof.

(13) “Raffle” means a game in which the prize is won by random drawing of the name or number of one (1) or more persons purchasing chances.

(14) “Session” means a period of time not to exceed eight (8) hours in any one (1) day in which players are allowed to participate in bingo games operated by a charitable or nonprofit organization.

(15) “Site system” means the computer hardware, software and peripheral equipment used by a licensed organization at the site of its bingo session that provides electronic bingo cards or bingo card monitoring devices to players, and that receipts the sale or rental of such cards and devices and generates reports relative to such sales or rentals.

(16) “Vendor” means an applicant, licensee or manufacturer, distributor or supplier, licensed or unlicensed, that furnishes or supplies bingo or raffle equipment, disposable or nondisposable cards, and any and all related gaming equipment.

History.

I.C., § 67-7702, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 1, p. 874; am. 1995, ch. 350, § 1, p. 1151; am. 1996, ch. 382, § 1, p. 1294; am. 2000, ch. 340, § 1, p. 1135; am. 2003, ch. 301, § 1, p. 827; am. 2005, ch. 259, § 1, p. 795; am. 2005, ch. 356, § 1, p. 1125; am. 2006, ch. 16, § 28, p. 42; am. 2008, ch. 43, § 1, p. 99; am. 2013, ch. 251, § 2, p. 610; am. 2017, ch. 58, § 34, p. 91.

STATUTORY NOTES

Prior Laws.

Former § 67-7702 was repealed, see Compiler’s notes, § 67-7701.

Amendments.

This section was amended by two 2005 acts which seem compatible and have been compiled together.

The 2005 amendment, by ch. 259, § 1, added the definitions of “electronic bingo card”, “electronic bingo device”, “host system”, and “site system”.

The 2005 amendment, by ch. 356, § 1 added the definition of “holiday Christmas tree fundraiser.”

The 2006 amendment, by ch. 16, redesignated the subsections in this section, conforming the multiple amendments of this section by S.L. 2005, ch. 259, § 1 and S.L. 2005, ch. 356, § 1.

The 2008 amendment, by ch. 43, in subsection (3), inserted “that conducts charitable activities”; in subsection (8), substituted “events” for “event” near the beginning and added the proviso; and in subsection (11), deleted “or an unincorporated association recognized under chapter 7, title 53, Idaho Code” from the end.

The 2013 amendment, by ch. 251, deleted former subsections (9) and (17), defining “Holiday Christmas tree fundraiser” and “Special permit”, and redesignated the remaining subsections accordingly.

The 2017 amendment, by ch. 58, substituted “chapter 30, title 30, Idaho Code” for “chapter 3, title 30, Idaho Code” at the end of subsection (10).

Federal References.

Sections 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), and 501(d) of the Internal Revenue Code, referred to in subsection (3), are compiled as 26 U.S.C. §§ 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), and 501(d), respectively.

Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

§ 67-7703. Bingo-raffle advisory board established. — There is established the bingo-raffle advisory board, which is responsible for making recommendations for the improvement of bingo and raffle operations and regulation to the state lottery commission, the governor and the legislature, including recommendations for administrative rules.

History.

I.C., § 67-7703, as added by 1995, ch. 350, § 2, p. 1151; am. 1996, ch. 382, § 2, p. 1294; am. 2000, ch. 340, § 2, p. 1135.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

Prior Laws.

Former § 67-7703 was repealed. See Prior Laws, § 67-7701.

Compiler's Notes.

Former § 67-7703 was amended and redesignated as § 67-7707 by § 6 of S.L. 1995, ch. 350, effective March 22, 1995.

§ 67-7704. Bingo-raffle advisory board — Members — Appointment — Qualifications. — (1) The bingo-raffle advisory board shall consist of six (6) members appointed by the governor and confirmed by the senate. Members shall be selected and appointed because of their ability and disposition to serve the state's interest and for knowledge of bingo and raffle operations. Members appointed by the governor shall serve at the pleasure of the governor, and shall be residents over twenty-five (25) years of age who have experience in administrating, conducting or regulating bingo or raffle operations. There shall be one (1) member from each of the following six (6) districts initially established as follows:

- (a) District No. 1. The counties of Benewah, Bonner, Boundary, Kootenai and Shoshone.
- (b) District No. 2. The counties of Clearwater, Idaho, Latah, Lewis and Nez Perce.
- (c) District No. 3. The counties of Ada, Adams, Boise, Canyon, Elmore, Gem, Payette, Owyhee, Valley and Washington.
- (d) District No. 4. The counties of Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls.
- (e) District No. 5. The counties of Bannock, Bear Lake, Bingham, Caribou, Franklin, Oneida and Power.
- (f) District No. 6. The counties of Bonneville, Butte, Clark, Custer, Fremont, Jefferson, Lemhi, Madison and Teton.

(2) The terms of appointed members of the bingo-raffle advisory board shall be three (3) years. At the end of a term, a member continues to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. A vacancy of the board shall be filled in the same manner as regular appointments are made, and the term shall be for the unexpired portion of the regular term. No member of the board shall have a direct or indirect pecuniary interest in any contract or agreement entered into by the board. No more than three (3) members of the board shall belong to the same political party.

History.

I.C., § 67-7704, as added by 1995, ch. 350, § 3, p. 1151; am. 2000, ch. 340, § 3, p. 1135; am. 2013, ch. 251, § 3, p. 610.

STATUTORY NOTES**Amendments.**

The 2013 amendment, by ch. 251, added the subsection designations; inserted “or raffle” near the end of the third sentence in the introductory paragraph in subsection (1); and deleted the length of terms of the first appointed members in subsection (2).

Compiler’s Notes.

Former § 67-7704 was amended and redesignated as § 67-7708 by § 7 of S.L. 1995, ch. 350, effective March 22, 1995.

§ 67-7705. Quorum — Meetings — Minutes — Compensation. — A majority of the qualified membership of the bingo-raffle advisory board is a quorum. The advisory board may not act unless at least four (4) members agree. The advisory board shall meet at least three (3) times per year, and may meet more often as it deems necessary. Written notice of the time and place of each meeting shall be given to each board member. The advisory board shall select or elect one (1) of its members to be chairman, one (1) of its members to be vice-chairman and one (1) of its members to be secretary. The secretary of the advisory board shall promptly send the lottery commission a certified copy of the minutes of each meeting of the advisory board. The minutes shall include a copy of the current recommendations of the board, including recommended administrative rules. Members of the bingo-raffle advisory board shall receive compensation as provided in section 59-509(b), Idaho Code. Members are entitled to reimbursement for reasonable travel expenses incurred in the performance of their duties as a member, as provided by law.

History.

I.C., § 67-7705, as added by 1995, ch. 350, § 4, p. 1151; am. 1996, ch. 382, § 3, p. 1294; am. 2000, ch. 340, § 4, p. 1135.

STATUTORY NOTES

Cross References.

Regulation of per diem traveling expenses, § 67-2004.

State lottery commission, § 67-7405.

Compiler's Notes.

Former § 67-7705 was amended and redesignated as § 67-7709 by § 8 of S.L. 1995, ch. 350, effective March 22, 1995.

§ 67-7706. Bingo-raffle advisory board — Powers — Duties. — The bingo-raffle advisory board shall review the operation and regulation of bingo games and raffle events in Idaho, and shall make recommendations to the state lottery commission regarding, but not limited to, the following issues:

(1) The issuances of licenses for the operation of bingo games and raffle events, including the denial, suspension or revocation of licenses;

(2) The collection of fees, penalties, fines and other moneys from organizations conducting or applying to conduct bingo games and/or raffle events;

(3) The maintenance by bingo operators of records and the efficacy of the statutes and rules requiring maintenance of records;

(4) The recordation and reporting of income from bingo games and raffle events to the state lottery commission, and the efficacy of the statutes and rules governing recordation and reporting;

(5) The efficacy and profitability of income and expenditure limits placed on organizations, by statute or rule, operating bingo games and/or raffle events in the state;

(6) The type, scope, manner, and frequency of bingo games and/or raffle events conducted in Idaho, and the efficacy of the statutes or rules governing those considerations;

(7) Possible cooperative agreements with county, city, and other local and state agencies that would enhance the safety and profitability of bingo games and/or raffle events;

(8) Possible written agreements or contracts with other states or any agency or contractor of another state for the operation and promotion of joint bingo games and/or raffle events that would enhance the safety and profitability of bingo and raffle operations in Idaho;

(9) What rules should be promulgated by the state lottery commission to ensure the safe, orderly and trustworthy operation of bingo games and/or raffle events in Idaho.

The bingo-raffle advisory board shall, at least twice a year, report to the state lottery commission addressing the operations and activities of the advisory board and the major issues facing bingo operators in the state. The lottery security division shall provide a final annual report to the governor, the lottery commission, the president pro tempore of the senate and the speaker of the house of representatives of the Idaho legislature.

History.

I.C., § 67-7706, as added by 1995, ch. 350, § 5, p. 1151; am. 2000, ch. 340, § 5, p. 1135; am. 2013, ch. 251, § 4, p. 610.

STATUTORY NOTES

Cross References.

Director of lottery security, § 67-7410.

State lottery commission, § 67-7405.

Amendments.

The 2013 amendment, by ch. 251, substituted “The lottery security division shall provide a final annual report” for “A final annual report shall be provided” at the beginning of the last sentence in the last paragraph.

Compiler’s Notes.

Former § 67-7706 was amended and redesignated as § 67-7710 by § 9 of S.L. 1995, ch. 350, effective March 22, 1995.

§ 67-7707. Bingo by charitable or nonprofit organizations. — (1) It is lawful for a charitable or nonprofit organization to conduct bingo sessions or games in accordance with the provisions of this chapter and the rules of the state lottery commission. Any charitable or nonprofit organization, any member of a charitable or nonprofit organization, or any person that conducts a bingo session or game in violation of any provision of this chapter or the rules of the state lottery commission may be assessed a civil penalty not in excess of ten thousand dollars (\$10,000) per violation. Additionally, any person knowingly conducting a bingo session or game in violation of the provisions of this chapter or the rules of the state lottery commission may be charged under the gambling laws contained in chapter 38, title 18, Idaho Code. Violations will be prosecuted by the county prosecuting attorney.

(2) No person under the age of eighteen (18) years may play bingo in games where a cash prize is offered or where the prize exceeds twenty-five dollars (\$25.00) in value for merchandise.

History.

I.C., § 67-7703, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 2, p. 874; am. and redesisg. 1995, ch. 350, § 6, p. 1151; am. 1996, ch. 382, § 4, p. 1294; am. 2000, ch. 340, § 6, p. 1135; am. 2013, ch. 251, § 5, p. 610.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

Amendments.

The 2013 amendment, by ch. 251, inserted “per violation” at the end of the second sentence in subsection (1); and, in subsection (2), deleted the last sentence, which read: “No person under the age of eighteen (18) may play bingo in any game operated by a licensed charitable or nonprofit organization.”

Compiler's Notes.

This section was formerly compiled as § 67-7703.

CASE NOTES

Cited *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

§ 67-7708. Limit on sessions and bingo prizes. — The number of sessions or games of bingo conducted or sponsored by a charitable or nonprofit organization shall be limited to three (3) sessions per week and such sessions shall not exceed a period of eight (8) hours per day. The maximum prize that may be offered or paid for any one (1) game of bingo, and the maximum aggregate amount of prizes that may be offered or paid for any one (1) session of bingo, shall be set by rule of the state lottery commission.

History.

I.C., § 67-7704, as added by 1993, ch. 391, § 2, p. 1448; am. and redesign. 1995, ch. 350, § 7, p. 1151; am. 2013, ch. 251, § 6, p. 610.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

Amendments.

The 2013 amendment, by ch. 251, deleted the former second sentence regarding maximum prize limits until July 1, 1997, deleted “After July 1, 1997” at the beginning of the present second sentence, and deleted the former last sentence, which read: “Provided however, that the maximums to be set by the state lottery commission shall not be below the amounts described in this statute.”

Compiler’s Notes.

This section was formerly compiled as § 67-7704.

§ 67-7709. Accounting and use of bingo proceeds. —

(1)(a) All funds received in connection with a bingo game required to be licensed pursuant to this chapter and the rules of the state lottery commission shall be placed in a separate bank account that is in the name of and controlled by the charitable or nonprofit organization. No funds may be disbursed from this account except the charitable or nonprofit organization may expend proceeds for prizes, advertising, rent including, but not limited to, renting space, chairs, tables, equipment and electronic bingo devices, utilities, the purchase of supplies and equipment in playing bingo, taxes and license fees related to bingo, the payment of compensation, and for the purposes set forth below for the remaining proceeds.

(b) Funds from bingo accounts must be withdrawn by preprinted, consecutively numbered checks or withdrawal slips, signed by an authorized representative of the licensed authorized organization and made payable to a person. A check or withdrawal slip shall not be made payable to “cash,” “bearer” or a fictitious payee. The nature of the payment made shall be noted on the face of the check or withdrawal slip. Checks for the bingo account shall be imprinted with the words “bingo account” and shall contain the organization’s bingo license name on the face of each check. A licensed authorized organization shall keep and account for all checks and withdrawal slips, including voided checks and withdrawal slips. Electronic transfers from the bingo account may be used for payments made to another governmental agency.

(c) Any proceeds available in a bingo account after payment of the expenses set forth in paragraph (1)(a) of this subsection shall inure to the charitable or nonprofit organization to be used for religious, charitable, civic, scientific testing, public safety, literary or educational purposes or for purchasing, constructing, maintaining, operating or using equipment or land, or a building or improvements thereto, owned, leased or rented by and for the charitable or nonprofit organization and used for civic purposes or made available by the charitable or nonprofit organization for use by the general public from time to time, or to foster amateur sports

competition, or for the prevention of cruelty to children or animals, provided that no proceeds shall be used or expended directly or indirectly to compensate officers or directors. The licensed bingo operation must maintain records for five (5) years on forms prescribed by the commission or pursuant to rules prescribed by the commission showing the charitable activities to which the proceeds described in this paragraph are applied. No employees of the charitable or nonprofit organization may be compensated from bingo proceeds except as provided in this subsection.

(d)(i) All gross revenues received from bingo games by a charitable or nonprofit organization must be disbursed in the following manner, unless otherwise provided in [section 67-7708, Idaho Code](#): not less than twenty percent (20%) of gross revenues shall be used for charitable purposes enumerated in this subsection, and a maximum of eighteen percent (18%) of the gross revenues may be used for administrative expenses associated with the charitable bingo game. An organization requesting an exemption from the disbursement percentages provided in this paragraph for administrative costs shall request such an exemption from the state lottery commission.

(ii) Two hundred fifty dollars (\$250) or one-tenth of one percent (.1%) of annual gross revenues, as per the previous year's annual bingo report whichever is greater may be paid as wages for the conduct of any one (1) bingo session. Such wages shall be paid on an hourly basis, shall be directly related to the preparation, conduct of and cleaning following a bingo session, and shall be paid out of the organization's separate bank account unless the director of lottery security has given prior written permission to pay wages out of another account. Such wages shall be part of the eighteen percent (18%) gross revenues used for administrative expenses.

(2) Any charitable or nonprofit organization conducting bingo games pursuant to this chapter shall prepare a statement at the close of its license year and shall file such statement with the state lottery. The statement shall be prepared on a form prescribed by the lottery commission and shall include, at a minimum, the following information: (a) The number of bingo sessions conducted or sponsored by the licensed organization; (b) The

location and date at which each bingo session was conducted; (c) The gross revenues of each bingo session;

(d) The fair market value of any prize given at each bingo session; (e) The number of individual players participating in each session; (f) The number of cards played in each session; (g) The amount paid in prizes at each session; (h) The amount paid to the charitable or nonprofit organization; (i) All disbursements from bingo revenue and the purpose of those disbursements must be documented on a general ledger and submitted with the annual bingo report to the Idaho lottery commission; and (j) An accounting of all gross revenues and the disbursements required by statute and rule of the state lottery commission must be retained in records with the organization, including the date of each transaction and the name and address of each payee for all prize payments in excess of one hundred dollars (\$100) and the disbursements of funds to charitable activities, including the identity of the charity and/or purpose and use of the disbursements by the charity. Such records shall be retained for a period of five (5) years.

(3) Any organization required to be licensed to conduct bingo operations under the provisions of this chapter shall use only nonreusable colored bingo paper or electronic bingo paper so that all sales may be tracked. The nonreusable colored paper must have a series and serial number on each card. At the conclusion of each session, all organizations using nonreusable bingo paper must track their bingo sales per session by recording the series and serial numbers of all paper sold, damaged, donated or used for promotion in that session. Each such organization shall keep a ledger of the numbers of all such papers used during each session. All paper must be tracked as either sold, damaged, donated, used for promotion, or omitted from the original distributor or manufacturer. Paper tracking ledgers and invoices from the distributor or manufacturer for nonrefundable colored bingo paper must be kept with the permanent records for that bingo operation.

(4) Any person who shall willfully or knowingly furnish, supply or otherwise give false information in any statement filed pursuant to this section shall be guilty of a misdemeanor.

(5) All financial books, papers, records and documents of an organization shall be kept as determined by rule of the state lottery and shall be open to inspection by the county sheriff of the county, or the chief of police of the city, or the prosecuting attorney of the county where the bingo game was held, or the attorney general or the state lottery at reasonable times and during reasonable hours.

(6) Every charitable or nonprofit organization whose annual gross revenues exceed two hundred thousand dollars (\$200,000) from the operation of bingo games shall provide the state lottery with a copy of an annual audit of the bingo operation. The audit shall be performed by an independent certified public accountant who is licensed in the state of Idaho and who meets peer review requirements set forth by the Idaho state board of accountancy. The audit shall be submitted to the Idaho state lottery within ninety (90) days after the end of the license year.

History.

I.C., § 67-7705, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 3, p. 874; am. and redesign. 1995, ch. 350, § 8, p. 1151; am. 1996, ch. 382, § 5, p. 1294; am. 2000, ch. 340, § 7, p. 1135; am. 2003, ch. 301, § 2, p. 827; am. 2003, ch. 314, § 1, p. 857; am. 2005, ch. 259, § 2, p. 795; am. 2008, ch. 43, § 2, p. 102; am. 2012, ch. 259, § 1, p. 719; am. 2013, ch. 251, § 7, p. 610.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Director of lottery security, § 67-7410.

Punishment for misdemeanor when not otherwise provided, § 18-113.

State board of accountancy, § 54-203.

State lottery commission, § 67-7405.

Amendments.

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 301, § 2, divided former subsection (1) into subsections 1(a) and (1)(c) and inserted subsection (1)(b), and in subsection (1)(c) substituted “a bingo account” for “the account” and substituted “expenses set forth in paragraph (1)(a) of this subsection” for “above expenses.”

The 2003 amendment, by ch. 314, § 1, inserted present subsections (2) (e), (2)(f) and (3), and redesignated all other subsections accordingly.

The 2008 amendment, by ch. 43, in paragraph (1)(a), inserted “rental of electronic bingo devices” in the last sentence; added the next-to-last sentence in paragraph (1)(c); added the paragraph (d)(i) designation, and therein added the last sentence; added the paragraph (d)(ii) designation, and therein, in the second sentence, substituted “wages shall be paid on an hourly basis” for “pay shall be on an hourly basis,” and added “and shall be paid out of the organization’s separate bank account unless the director of lottery security has given prior written permission to pay wages out of another account,” and deleted the former last sentence, which read: “An organization requesting an exemption from the disbursement percentages provided in this subsection for administrative costs may request an exemption from the state lottery commission”; and in paragraph (2)(j), added “and the disbursements of funds to charitable activities, including the identity of the charity and/or purpose and use of the disbursements by the charity.”

The 2012 amendment, by ch. 259, in paragraph (1)(d)(i), deleted “not more than sixty-five percent (65%) of the gross revenues shall be used for prizes in the charitable bingo game” following “[section 67-7708, Idaho Code](#),” and substituted “and a maximum of eighteen percent (18%) of the gross revenues may” for “and not more than fifteen percent (15%) of the gross revenues shall” in the first sentence, deleted the former second sentence concerning decreasing the gross revenues spent and allocating those revenues to prizes, and substituted “shall request such” for “may request” in the last sentence; and substituted “eighteen percent (18%)” for “fifteen percent (15%)” in paragraph (1)(d)(ii).

The 2013 amendment, by ch. 251, in paragraph (1)(a), inserted “that is in the name of and controlled by the charitable or nonprofit organization” at the end of the first sentence and substituted “rent including, but not limited

to, renting space, chairs, tables, equipment and electronic bingo devices, utilities” for “utilities, rental of electronic bingo devices, and” in the last sentence; added the last sentence in paragraph (1)(b); in (1)(c), substituted “five (5) years” for “three (3) years” in the second sentence and inserted “or nonprofit” in the last sentence; inserted “or nonprofit” in the last sentence in paragraph (2)(h); in paragraph (2)(j), deleted “permanent” preceding “records” near the beginning of the first sentence and added the last sentence; and substituted the last two sentences in subsection (6) for “The audit shall be performed by an independent public accountant and submitted within ninety (90) days after the end of the license year.”

Compiler’s Notes.

This section was formerly compiled as § 67-7705.

CASE NOTES

Accounting of checks.

Compensation.

Accounting of Checks.

Idaho lottery commission did not abuse its discretion in determining that the nonprofit organizations failed to keep and account for all checks; instead of keeping or obtaining and producing the underlying records needed to fulfill the duty of scrutiny, the organizations told the commission to fetch the records at the commission’s expense. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm’n*, 144 Idaho 23, 156 P.3d 524 (2007).

Compensation.

Fact that the bingo organizers did not receive a paycheck from the organizations did not mean that they were volunteers working on behalf of the organization where the arrangement with the non-gaming equipment provider ran afoul of the prohibition on contracting with outsiders to conduct bingo; the equipment provider received not rents, but bingo profits, and to the extent that the organizers exercised control over the expenses, they were doing so as agents of the provider, not of the organizations. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm’n*, 144 Idaho 23, 156 P.3d 524 (2007).

Cited *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm’n*, 142 Idaho 659, 132 P.3d 416 (2006).

§ 67-7710. Raffles — Duck races. — (1) It is lawful for any charitable or nonprofit organization to conduct raffles in accordance with the provisions of this chapter. Any charitable or nonprofit organization or any person that conducts a raffle in violation of any provision of this chapter may be assessed a civil penalty not in excess of ten thousand dollars (\$10,000) per violation. Additionally, any person knowingly conducting a raffle in violation of any provision of this chapter or rule of the state lottery commission may be charged under the gambling laws of the state contained in chapter 38, title 18, Idaho Code, and may be assessed a civil penalty by the lottery not in excess of ten thousand dollars (\$10,000) per violation. It shall not constitute a violation of state law to advertise a charitable raffle conducted pursuant to this section. It is lawful to participate in a charitable raffle conducted pursuant to this chapter. A charitable raffle conducted lawfully pursuant to this chapter is not gambling for purposes of chapter 38, title 18, Idaho Code.

(2) Raffle drawings must be held in Idaho and shall be limited to twelve (12) per charitable or nonprofit organization per year, provided that this limitation shall not apply to public or private elementary schools, secondary schools or higher education institutions located in this state. The maximum aggregate value of cash prize(s) that may be offered or paid for any one (1) raffle, which is not a duck race is one thousand dollars (\$1,000) and if merchandise is used as a prize and it is not redeemable for cash, there shall be no limit on the maximum amount of value for the merchandise. For duck races, there shall be no limit on the maximum amount of the value of a cash prize if the cash prize is underwritten by insurance. If a duck race offers a cash prize that is not underwritten by insurance, the maximum aggregate value of the cash prize(s) is one thousand dollars (\$1,000). There shall be no limit on the maximum of value for merchandise used as a prize in a duck race if the merchandise is not redeemable for cash.

(3) As used in this subsection, “net proceeds of a charitable raffle” means the gross receipts less the cost of prizes awarded. “Net proceeds of a duck race” shall mean gross receipts, less the cost of prizes awarded and the rental cost of the ducks used in the race. No less than eighty percent (80%) of the net proceeds of a raffle shall be used by the charitable or nonprofit

organization for charitable, religious, educational, civic or other charitable purposes.

(4) Any licensed charitable or nonprofit organization conducting raffles pursuant to this chapter shall prepare a statement at the close of its license year and shall file such statement with the state lottery. The statement shall be prepared on a form prescribed by the lottery commission and shall include, at a minimum, the following information: (a) The number of raffles conducted or sponsored by the charitable or nonprofit organization; (b) The location and date at which each raffle was conducted; (c) The gross revenues of each raffle; (d) The fair market value of any prize given at each raffle; (e) The amount paid in prizes at each raffle; (f) The amount paid to the charitable or nonprofit organization; (g) An accounting of all gross revenues and the disbursements required by statute and rule of the state lottery commission that shall be retained in the organization's records for a period of five (5) years.

(5) Every charitable or nonprofit organization whose annual gross revenues exceed two hundred thousand dollars (\$200,000) from the operation of raffle events shall provide the state lottery with a copy of an annual audit of the raffle events. The audit shall be performed by a certified public accountant who is licensed in the state of Idaho and who meets the peer review requirements set forth by the Idaho state board of accountancy. The audit shall be submitted to the Idaho state lottery within ninety (90) days after the end of the license year.

History.

I.C., § 67-7706, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 4, p. 874; am. and redesign. 1995, ch. 350, § 9, p. 1151; am. 1996, ch. 382, § 6, p. 1294; am. 1999, ch. 134, § 1, p. 380; am. 2000, ch. 340, § 8, p. 1135; am. 2005, ch. 356, § 2, p. 1125; am. 2012, ch. 259, § 2, p. 719; am. 2013, ch. 251, § 8, p. 610.

STATUTORY NOTES

Cross References.

State board of accountancy, § 54-203.

State lottery commission, § 67-7405.

Amendments.

The 2012 amendment, by ch. 259, in the last sentence in subsection (3) substituted “eighty percent (80%)” for “ninety percent (90%)”, inserted “or nonprofit,” and substituted “or other charitable purposes” for “or other nonprofit purposes” at the end.

The 2013 amendment, by ch. 251, rewrote the section to the extent that a detailed comparison is impracticable, deleting provisions relating to holiday Christmas tree fundraisers.

Compiler’s Notes.

This section was formerly compiled as § 67-7706.

Effective Dates.

Section 2 of S.L. 1999, ch. 134 declared an emergency. Approved March 19, 1999.

CASE NOTES

Cited *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm’n*, 142 Idaho 659, 132 P.3d 416 (2006).

§ 67-7711. Licensing procedure. — (1) Any charitable or nonprofit organization not exempt pursuant to section 67-7713, Idaho Code, desiring to operate bingo sessions or games or charitable raffles shall make application for a license to the state lottery. The state lottery shall review the license application and shall approve or deny the issuing of a license within fifteen (15) calendar days of receipt of the license application. The state lottery may deny the application if it determines that the applicant has not met requirements for an application imposed in this chapter and rules promulgated pursuant to this chapter or upon any ground for which an application for renewal of a license could be denied or for which an existing licensee's license could be revoked or suspended. Whenever an application is denied, it shall be returned to the applicant by the state lottery with specific reasons for the denial. When a license application is approved by the state lottery, the state lottery shall issue a license to the applicant. No person or charitable or nonprofit organization, except those exempt pursuant to section 67-7713, Idaho Code, shall operate or conduct a bingo session or game or charitable raffle until it has received a license from the state lottery. The license shall expire one (1) year after the date it was issued.

(2) Each application and renewal application shall contain the following information:

- (a) The name, address, date of birth, driver's license number and social security number of the applicant and, if the applicant is a corporation, association or other similar legal entity, the name, home address, date of birth, driver's license number and social security number of each of the officers of the organization, as well as the name and address of the directors, or other persons similarly situated, of the organization;
- (b) The name, home address, date of birth, driver's license number and social security number of each person or persons responsible for managing the bingo session or game or raffle;
- (c)(i) In the case of charitable organizations, a copy of the application for recognition of exemptions and a determination letter from the internal revenue service that indicates the organization is a charitable organization and states the section under which that exemption is

granted, except that if the organization is a state or local branch, lodge, post or chapter of a national organization, a copy of the determination letter of the national organization shall satisfy this requirement; and

(ii) In the case of incorporated nonprofit organizations, a copy of a certificate of existence issued by the secretary of state pursuant to chapter 30, title 30, Idaho Code, establishing the organization's good standing in the state.

(d) The location at which the applicant will conduct the bingo session or games or drawings for the raffles.

(3) The operation of bingo sessions or games or charitable raffles shall be the direct responsibility of, and controlled by, the governing body of the organization and the members of the governing body shall be held responsible for the conduct of the bingo sessions or games or raffles. No directors or officers of an organization or persons related to them either by marriage or blood within the second degree shall receive any compensation derived from the proceeds of a bingo session or raffle regulated under the provisions of this chapter. An organization shall not contract with any person for the purpose of conducting a bingo session or providing bingo services or conducting a raffle on the organization's behalf, provided that this prohibition does not prevent a bingo organization from hiring employees and paying wages as provided in [section 67-7709\(1\)\(d\)\(ii\), Idaho Code](#). However, if the state lottery commission has entered into an agreement or contract with another state for the operation or promotion of joint bingo sessions, the charitable or nonprofit organization may participate in that contract or agreement.

(4) Different chapters of an organization may apply for and share one (1) license to conduct raffles as long as the information required in subsection (2) of this section is provided to the lottery prior to the issuance of the license.

(5) The organization may apply for the license to coincide with the organization's fiscal year.

History.

[I.C., § 67-7707](#), as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 5, p. 874; am. and redesign. 1995, ch. 350, § 10, p. 1151; am. 1996,

ch. 382, § 7, p. 1294; am. 2000, ch. 340, § 9, p. 1135; am. 2008, ch. 43, § 3, p. 104; am. 2013, ch. 251, § 9, p. 610; am. 2017, ch. 58, § 35, p. 91.

STATUTORY NOTES

Cross References.

Secretary of state, § 67-901 et seq.

State lottery commission, § 67-7405.

Amendments.

The 2008 amendment, by ch. 43, in subsection (1), inserted “for an application,” twice substituted “chapter” for “act,” and added “or upon any ground for which an application for renewal of a license could be denied or for which an existing licensee’s license could be revoked or suspended”; in paragraph (2)(c)(i), deleted “and the state tax commission” following “internal revenue service”; deleted paragraph (2)(c)(iii), which pertained to a statement appointing an agent for service of process; and in the next-to-last sentence in subsection (3), deleted “not employed by, or a volunteer for, the organization” following “person,” inserted “providing bingo services or conducting a,” and added the proviso.

The 2013 amendment, by ch. 251, deleted the former last sentence of subsection (1), which read, “A copy of the license shall be furnished to the county sheriff of the county or the chief of police of the city in which the licensee intends to operate a bingo session or game or sell charitable raffle tickets before a bingo session or game or a charitable raffle is conducted by the licensee”; and, in subsection (3), combined the former first and second sentences, deleting “a special committee selected by” following “controlled by” and substituting “and” for “If the governing body has not appointed a special committee” following “organization.”

The 2017 amendment, by ch. 58, in subsection (2), substituted “chapter 30, title 30, Idaho Code” for “chapter 3, title 30, Idaho Code” near the end of paragraph (c)(ii).

Compiler’s Notes.

This section was formerly compiled as § 67-7707.

CASE NOTES

Compensation.

Constitutionality.

Compensation.

Fact that the bingo organizers did not receive a paycheck from the organizations did not mean that they were volunteers working on behalf of the organization where the arrangement with the non-gaming equipment provider ran afoul of the prohibition on contracting with outsiders to conduct bingo; the equipment provider received not rents, but bingo profits, and to the extent that the organizers exercised control over the expenses, they were doing so as agents of the provider, not of the organizations. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

Constitutionality.

Contrary to the organization's assertion, it was not at all unexpected that a statute governing licensing procedure might specify some of the substantive conditions that must be satisfied in order for a license to issue; the derivative compensation and anti-outsourcing provisions, as conditions of licensure, were sufficiently related to licensing procedure to survive a constitutional challenge. *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

§ 67-7712. License fees — Suspension or revocation. — (1) Each organization that applies to the state lottery for a license pursuant to this chapter shall pay annually to the state lottery a nonrefundable license fee which shall be due upon submission of the application. License fees shall be based on the organization's gross revenues from bingo or raffle operations as required to be reported by statute or rule of the commission. Organizations with gross revenues of twenty-five thousand dollars (\$25,000) or less shall pay a fee of one hundred dollars (\$100). Organizations with gross revenues of twenty-five thousand dollars (\$25,000) to seventy-five thousand dollars (\$75,000) shall pay a fee of two hundred dollars (\$200). Organizations with gross revenues exceeding seventy-five thousand dollars (\$75,000) shall pay a fee of three hundred dollars (\$300). New organizations with no history of gross revenues shall pay a fee of one hundred dollars (\$100), and the gross revenues indicated in the organization's first annual report shall determine the license renewal fee.

(2) Any license issued pursuant to this chapter may be suspended or revoked by the state lottery if it is found that the licensee or any person connected with the licensee has violated any provision of this chapter or any rule of the lottery commission or ordinance of a county adopted pursuant to this chapter or:

- (a) Has continued to operate bingo sessions or games after losing its tax exempt or nonprofit status or ceases to exercise independent control over its activities or budget as required under the provisions of this chapter;
- (b) Has violated or has failed or refused to comply with the provisions of this chapter, or has violated the provisions of a rule of the lottery commission or has allowed such a violation to occur upon premises over which the licensee has substantial control;
- (c) Has knowingly caused, aided or abetted, or conspired with another to cause, any person to fail or refuse to comply with the provisions, requirements, conditions, limitation or duties imposed in this chapter, or to fail or refuse to comply with a rule adopted by the state lottery commission;

(d) Has obtained a license or permit by fraud, misrepresentation or concealment, or through inadvertence or mistake;

(e) Has been convicted, forfeited bond, or has been granted a withheld judgment, upon a charge involving forgery, theft, willful failure to make required payments or reports to a governmental agency at any level, or filing false reports to a governmental agency, or any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor, involving gambling activity, physical injury to individuals or moral turpitude;

(f) Denies the state lottery access to any place where a licensed game is conducted, denies access to any law enforcement officer, or fails promptly to produce for inspection or audit any records or items as required by law;

(g) Fails to have the license available for verification where the licensed game is conducted;

(h) Misrepresents or fails to disclose to the state lottery or any investigating law enforcement officer any material fact;

(i) Fails to demonstrate to the state lottery by clear and convincing evidence, qualifications for the license according to state law and the rules of the state lottery establishing such qualifications;

(j) Is subject to current prosecution or pending charges, or to a conviction regardless of whether it has been appealed, for any offense described in paragraph (e) of this subsection. At the request of an applicant for an original license, the state lottery may defer decision upon the application during the pendency of the prosecution or appeal;

(k) Has pursued or is pursuing economic gain in a manner or context which violates criminal or civil public policy of this state and creates a reasonable belief that the participation of the person in gaming operations by charitable or nonprofit organizations would be harmful to the proper operation of a lawful bingo or raffle.

(3) The state lottery may, upon its own motion or upon a written verified complaint of any other person, investigate the operation of any gaming purportedly authorized in this chapter. If the state lottery has reasonable

cause to believe that any gaming as described in this chapter violates any of the provisions of this chapter or rules promulgated pursuant to this chapter, it may, in its discretion, place in probationary status, revoke, cancel, rescind or suspend any license. The state lottery may refuse to grant a renewal of the license or it may take other action as may be appropriate under this chapter and any rules promulgated pursuant to this chapter. If the state lottery shall refuse to grant a license or refuse to grant a renewal of a license or revoke, cancel, rescind or suspend a license, it shall give the applicant or licensee fifteen (15) calendar days' written notice of its intended action stating generally the basis for its action. Within the fifteen (15) calendar day notice period, the applicant or licensee shall indicate its acceptance of the decision of the state lottery or shall request a hearing to be held in the same manner as hearings in contested cases pursuant to chapter 52, title 67, Idaho Code. The hearing shall be conducted within twenty-one (21) days of the request. The applicant or licensee may appeal the decision of the state lottery after the hearing within the same time and manner as provided for judicial review of actions pursuant to chapter 52, title 67, Idaho Code. Failure to make the request for a hearing as provided herein, shall render the decision of the state lottery final and not subject to further appeal.

History.

I.C., § 67-7708, as added by 1993, ch. 391, § 2, p. 1448; am. 1994, ch. 281, § 6, p. 874; am. and redesign. 1995, ch. 350, § 11, p. 1151; am. 1996, ch. 382, § 8, p. 1294; am. 2013, ch. 251, § 10, p. 610.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

Amendments.

The 2013 amendment, by ch. 251, substituted “may be suspended” for “shall be suspended” in the introductory paragraph in subsection (2); and, in subsection (3), divided the former second sentence into present second and third sentences, inserted “place in probationary status”, substituted “The state lottery” for “for a period not to exceed one (1) year, or it”, and substituted “this chapter” for “this act” two times.

Compiler's Notes.

This section was formerly compiled as § 67-7708.

Effective Dates.

Section 9 of S.L. 1994, ch. 281 provided that this act shall be in full force and effect on and after July 1, 1994.

CASE NOTES

Cited *Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n*, 144 Idaho 23, 156 P.3d 524 (2007).

§ 67-7713. Licensure requirements. — A charitable or nonprofit organization conducting a bingo game shall be required to obtain a license if the gross annual bingo sales are ten thousand dollars (\$10,000) or more. A charitable or nonprofit organization conducting a raffle shall be required to obtain a license if the maximum aggregate value of merchandise exceeds five thousand dollars (\$5,000).

History.

I.C., § 67-7710, as added by 1993, ch. 391, § 2, p. 1448; am. and redesign. 1995, ch. 350, § 12, p. 1151; am. 1996, ch. 382, § 9, p. 1294; am. 2000, ch. 340, § 10, p. 1135; am. 2003, ch. 313, § 1, p. 857; am. 2013, ch. 251, § 11, p. 610.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 251, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)” at the end of the last sentence.

Compiler’s Notes.

This section was formerly compiled as § 67-7710.

§ 67-7714. Rules and forms. — The state lottery commission is authorized to promulgate rules consistent with this act in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this act and shall prescribe standardized forms for implementation of this act.

History.

I.C., § 67-7711, as added by 1993, ch. 391, § 2, p. 1448; am. and redesign. 1995, ch. 350, § 13, p. 1151.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

Compiler's Notes.

This section was formerly compiled as § 67-7711.

The term “this act” refers to S.L. 1993, Chapter 391, which is compiled as §§ 67-7701, 67-7702, and 67-7707 to 67-7714.

CASE NOTES

Forms.

Declaratory judgment claim against the Idaho state lottery commission, requesting a finding that an amendment to the gaming tracking provision requiring bingo operators to track all bingo paper used was not enacted in substantial compliance with the Idaho administrative procedure act, was properly denied. **Sons & Daughters of Idaho, Inc. v. Idaho Lottery Comm'n**, 142 Idaho 659, 132 P.3d 416 (2006).

§ 67-7715. Vendors — Licensing — Fees. — (1) No person or entity shall manufacture, sell, distribute, furnish or supply to any person or entity any gaming device, equipment or material, in this state or for use in this state, without first obtaining a vendor's license from the state lottery commission. Vendor licenses shall not be issued by the state lottery except respecting devices, equipment or material designed and permitted to be used in connection with activities authorized under this chapter. Provided however, that this licensing requirement shall apply only insofar as the state lottery commission has adopted rules implementing it as to particular categories of gaming devices and related material and equipment.

(2) Any person or entity that manufactures, sells, distributes, furnishes or supplies any gaming device, equipment or material, in this state or for use in this state shall make application for a vendor license to the state lottery. The state lottery shall review the license application and shall approve or deny the issuing of a license within fifteen (15) calendar days of receipt of the license application. The state lottery may deny the application if it determines that the applicant has not met the requirements imposed in this chapter and rules promulgated pursuant to this chapter. Whenever an application is denied, it shall be returned to the applicant by the state lottery with specific reasons for the denial. When the license application is approved by the state lottery, the state lottery shall issue a license to the applicant.

(3) Each application and renewal application shall contain the following information:

(a) The name, address, date of birth, driver's license number and social security number of the applicant and if the applicant is a corporation, proprietorship, association, partnership or other similar legal entity, the name, home address, date of birth, driver's license number and social security number of each of the officers of the corporation and their spouses, as well as the name and address of the directors and their spouses, or other persons similarly situated.

(b) The locations or persons with which the applicant will provide any gaming device, equipment or material in this state or for use in this state.

(4) Each applicant shall pay annually to the state lottery a nonrefundable license fee of five hundred dollars (\$500) which shall be due upon submission of the application.

(5) Each licensed vendor shall maintain records of all sales to organizations in Idaho for a period of five (5) years. Such records shall be provided to the lottery upon request.

(6) Any license issued pursuant to this section shall be suspended or revoked by the state lottery and the licensee may be assessed a civil penalty by the state lottery up to ten thousand dollars (\$10,000) per violation if it is found that the licensee or any person connected with the licensee has violated any provision of this chapter, particularly those in [section 67-7712, Idaho Code](#), or any rule of the lottery commission.

History.

[I.C., § 67-7715](#), as added by 1995, ch. 350, § 14, p. 1151; am. 1996, ch. 382, § 10, p. 1294; am. 2000, ch. 340, § 11, p. 1135; am. 2013, ch. 251, § 12, p. 610.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

Amendments.

The 2013 amendment, by ch. 251, substituted “chapter” for “act” two times in the third sentence of subsection (2); deleted former subsection (4), which read, “Any licensee under this section shall submit an annual revenue report to the Idaho lottery commission within thirty (30) days of the end of the licensed year on the prescribed forms provided by the Idaho lottery commission”; redesignated former subsection (5) as subsection (4); inserted present subsection (5); and, in subsection (6), substituted “section” for “chapter” and inserted “and the licensee may be assessed a civil penalty by the state lottery up to ten thousand dollars (\$10,000) per violation.”

Effective Dates.

Section 15 of S.L. 1995, ch. 350, declared an emergency. Approved March 22, 1995.

Section 11 of S.L. 1996, ch. 382 declared an emergency. Approved March 20, 1996.

§ 67-7716. Electronic bingo device and site systems — Approval required. — (1) Electronic bingo devices and site system software shall be sold, rented, leased or otherwise provided in this state only by a licensed manufacturer. Licensed manufacturers shall sell, rent, lease or otherwise provide such equipment only to a licensed distributor. A copy of any contractual agreement between a licensed manufacturer and a licensed distributor relative to the marketing of the manufacturer's equipment in this state, shall be provided to the commission.

(2) No electronic bingo device or site system software may be sold, rented, leased or otherwise provided to any person in this state for use in a bingo game conducted pursuant to this chapter unless and until such device and system software have been approved by the commission. Approval of the device or site system software will be based upon conformance with the requirements contained in this chapter and rules established by the commission for the testing and review of these types of devices and systems.

(3) A licensed manufacturer seeking approval of an electronic bingo device or site system software may be required to submit a prototype of the device or system software for testing and review, at the expense of the manufacturer, as required by the commission. Once approved, any hardware or software modifications must be preapproved by the commission. A licensed manufacturer shall be responsible for the actual costs of testing and examining bingo card monitoring devices, host systems and site system hardware.

History.

I.C., § 67-7716, as added by 2005, ch. 259, § 3, p. 795.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

§ 67-7717. Manufacturing and distributing requirements. — (1) No electronic bingo device shall be able to monitor more than fifty-four (54) bingo faces per game. The licensed manufacturer or distributor must restrict the device to store no more than fifty-four (54) faces per bingo game in its electronic database. After July 1, 2005, the maximum amount of electronic bingo cards played per game may be set by rule of the commission.

(2) Each electronic bingo device that requires a site system to download electronic bingo cards to the device, shall have a unique and permanent identification number hardcoded into the device's software. The identification number shall be communicated from the device to the site system whenever the device is connected to the site system, and printed on all transaction logs including the player's receipt. Manual input of a device identification number into the site system or on any transaction log or receipt is prohibited.

(3) Each electronic bingo device shall be programmed to automatically erase all electronic bingo cards and/or bingo card face numbers stored in the device: (a) upon turning off the device after the last bingo game of the session has been played, or (b) by some secondary timing method established by the manufacturer and approved by the commission.

(4) No electronic bingo device shall be designed to allow bingo players the ability to design their own bingo cards by choosing, rearranging or placing numbers on a card.

(5) A site system shall not be able to engage in any type of sale, void or reload transaction unless an electronic bingo device is connected to and communicating with the site system.

(6) A site system shall be restricted to load no more than fifty-four (54) electronic bingo faces per bingo game into any one (1) electronic bingo device, and the site system must be interfaced with a printer which is capable of printing upon request, a continuous hard copy transaction log and a printout for the player showing the device identification number, and all of the bingo cards and their face numbers loaded into the device. A receipting function for electronic bingo cards must be self-contained within

the site system and must record and print out on a copy which is given to the player, the device identification number, the date, number of electronic bingo cards purchased or loaded, and the total amount charged for the electronic bingo cards.

(7) A site system shall be able to provide the winning game patterns required for the entire bingo session on a hardcopy printout. The printout must be available upon demand at the bingo session.

(8) If the commission detects or discovers any malfunction or problem with an electronic bingo device or site system that could affect the security or integrity of the bingo game, the electronic bingo devices, or the site system, the commission may direct the manufacturer, distributor or licensed organization to cease providing or using the electronic bingo devices or site system, as applicable. The commission may require the manufacturer to correct the problem or recall the devices or system immediately upon notification by the commission to the manufacturer. Failure to take the corrective action requested may result in confiscation or seizure of the devices and/or site system.

(9) If a manufacturer, distributor or licensed organization detects or discovers any malfunction or problem with the electronic bingo devices or site system which could affect the security or integrity of the bingo game, bingo card monitoring devices, or site system, the manufacturer, distributor or licensed organization, as applicable, shall discontinue use of the devices or site system and notify the commission by telephone by the next working day of such action and the nature of the problem detected. The commission may request further explanation in writing if deemed necessary.

History.

I.C., § 67-7717, as added by 2005, ch. 259, § 4, p. 795.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

§ 67-7718. Licensed distributor requirements and duties. — (1) A licensed distributor shall purchase, rent, lease or otherwise obtain electronic bingo devices and site system software only from a manufacturer licensed by the commission. A licensed distributor shall sell, rent, lease or otherwise provide, only electronic bingo devices and site system software that have been approved by the commission.

(2) A licensed distributor shall sell, rent, lease or otherwise provide electronic bingo devices and site system software in this state only to an organization holding a charitable gaming bingo license.

(3) Before the initial use by the licensed organization, the licensed distributor must notify the commission in writing of the sale, rental, lease, provision, and/or installation of any electronic bingo devices or site system software. Such notification shall include:

- (a) The complete name and address of the licensed organization and its license number;
- (b) The type of equipment, including serial numbers, sold, rented, leased, provided or installed;
- (c) The expected start-up date for use of the equipment by the licensed organization; and
- (d) A copy of any agreement between the licensed distributor and the organization for the use of the equipment.

(4) The licensed distributor shall serve as the initial contact for the licensed organization with respect to requests for installation, service, maintenance, or repair of electronic bingo devices and site systems, and for the ordering of electronic bingo cards, if applicable. The distributor may, as needed, enlist the aid of the licensed manufacturer in providing service, repair or maintenance of the devices or site system. A licensed manufacturer may, with commission approval, authorize or subcontract with a person or company to service, maintain or repair bingo card monitoring devices and/or site systems; however, the ultimate liability for such service, maintenance or repair shall be solely that of the licensed manufacturer.

(5) The licensed distributor shall invoice the licensed organization and collect any and all payments for the sale, rental, lease or other use of the electronic bingo cards, bingo card monitoring devices and site systems. The distributor may, at its discretion, allow the licensed manufacturer to generate the invoice; however, all payments by the licensed organization must be remitted directly to the distributor. The licensed distributor must ensure that its name, complete address, and telephone number appear on the invoice as well as the name, complete address and license number of the licensed organization.

(6) Electronic bingo devices may be transported by a licensed distributor from one (1) location to another for use by more than one (1) licensed organization provided the distributor notifies the commission of the rotation schedule of the devices. However, each licensed organization utilizing a site system must have its own site system, which cannot be moved from its bingo location or be used by another organization without prior approval from the commission.

History.

I.C., § 67-7718, as added by 2005, ch. 259, § 5, p. 795.

STATUTORY NOTES

Cross References.

State lottery commission, § 67-7405.

§ 67-7719. Licensed organizations — Use of electronic bingo devices.

— (1) A licensed organization shall purchase, rent, lease or otherwise obtain electronic bingo devices and site system software only from an Idaho licensed distributor. A licensed organization may obtain terminals and/or printers to be used in conjunction with site system software obtained from a licensed distributor, from any source.

(2) The use of a player-owned electronic bingo device at a bingo session is prohibited.

(3) Electronic bingo devices shall be rented, leased or otherwise provided to bingo players only by the licensed organization conducting the bingo session, and only at the time and place of the bingo session. A bingo player using an electronic bingo device must be physically present on the premises, during the time of the bingo session, in order to be eligible to play bingo or win any bingo prize.

(4) Regardless of the number of electronic bingo devices made available for play, at least one (1) device shall be reserved by the licensed organization as a backup device, in the event a device in play malfunctions.

(5) Electronic bingo devices shall be made available to players on a first-come, first-served basis. No device may be reserved for any player, except a device may be reserved for any player with a disability that would restrict his or her ability to mark cards and such disability is consistent with definitions set forth in the Americans with disabilities act.

(6) No bingo player shall be allowed to utilize more than one (1) bingo card monitoring device at any time during a bingo occasion.

(7) An electronic bingo device cannot be used to monitor hard bingo cards or shutter cards.

(8) A licensed organization shall not permit a bingo player to choose or reject individual electronic bingo cards loaded into an electronic bingo device.

(9) At the licensed organization's discretion, a bingo player may, in addition to the maximum fifty-four (54) bingo cards per game which he or

she purchases to monitor with an electronic bingo device, purchase additional disposable paper bingo cards to play using a manual daubing or marking method.

(10) An electronic bingo device shall be downloaded with electronic bingo cards by the licensed organization:

- (a) Only upon payment by the player;
- (b) Only on the premises of the licensed organization's bingo session; and
- (c) Only during the time of the bingo session.

(11) A licensed organization may, at its discretion, charge a separate fee to players for the use of an electronic bingo device. The fee charged must be separately stated on the cash register and bingo player's receipt and shall be included in the bingo cash receipts.

(12) The sale of all bingo cards used in conjunction with an electronic bingo device must be receipted by either cash register or site system. Additional disposable paper bingo card sales must be separately receipted and, in addition, the cash register and player's receipt must identify and show the sale of disposable paper bingo cards separately from that of electronic bingo cards.

History.

I.C., § 67-7719, as added by 2005, ch. 259, § 6, p. 795.

STATUTORY NOTES

Federal References.

The Americans with disabilities act, referred to in subsection (5), is codified as 42 U.S.C.S. § 12101 et seq.

Chapter 78

PACIFIC NORTHWEST ECONOMIC REGION

Sec.

67-7801. Legislative findings.

67-7802. Pacific northwest economic region.

67-7803. Cooperative activities.

§ 67-7801. Legislative findings. — The legislature finds that there is a new emerging global economy in which countries and regions located in specific areas of the world are forging new cooperative arrangements.

The legislature finds that these new cooperative arrangements are increasing the competitiveness of the participating countries and regions, thus increasing the economic benefits and the overall quality of life for the citizens of the individual countries and regions.

The legislature also finds that the Pacific northwest states of Alaska, Idaho, Montana, Oregon and Washington and the Canadian provinces of Alberta and British Columbia are in a strategic position to act together, as a region, thus increasing the overall competitiveness of the individual states and provinces that will provide substantial economic benefits for all of their citizens.

History.

I.C., § 67-7801, as added by 1991, ch. 99, § 1, p. 218.

§ 67-7802. Pacific northwest economic region. — The Pacific northwest economic region is hereby enacted into law and entered into by the state of Idaho as a party, and is in full force and effect in accordance with the terms of this agreement.

THE PACIFIC NORTHWEST ECONOMIC REGION

ARTICLE I — Policy and Purpose

States and provinces participating in the Pacific northwest economic region shall seek to develop and establish policies that: promote greater regional collaboration among the seven (7) entities; enhance the overall competitiveness of the region in international and domestic markets; increase the economic well-being of all citizens in the region; and improve the quality of life of the citizens of the Pacific northwest.

States and provinces recognize that there are many public policy areas in which cooperation and joint efforts would be mutually beneficial. These areas include, but are not limited to: international trade; economic development; human resources; the environment and natural resources; energy; and education. Parties to this agreement shall work diligently to establish collaborative activity in these and other appropriate policy areas where such cooperation is deemed worthwhile and of benefit to the participating entities. Participating states and provinces also agree that there are areas in which cooperation may not be feasible.

The substantive actions of the Pacific northwest economic region may take the form of uniform legislation enacted by two (2) or more states and/or provinces or policy initiatives endorsed as appropriate by participating entities. It shall not be necessary for all states and provinces to participate in each initiative.

ARTICLE II — Eligible Parties and Effective Date

Each of the following states and provinces is eligible to become a party to this agreement: Alaska, Alberta, British Columbia, Idaho, Montana, Oregon and Washington. This agreement establishing the Pacific northwest economic region shall become effective when it is executed by one (1) state, one (1) province, and one (1) additional state and/or province in a

form deemed appropriate by each entity. This agreement shall continue in force and remain binding upon each state and province until renounced by it. Renunciation of this agreement must be preceded by sending one (1) year's notice in writing of intention to withdraw from the agreement to the other parties to the agreement.

ARTICLE III — Organizational Structure

Each state and province participating in this agreement shall appoint representatives to the Pacific northwest economic region. The organizational structure of the Pacific northwest economic region shall consist of the following: a delegate council consisting of four (4) legislators and the governor or governor's designee from each participating state and four (4) representatives and the premier or the premier's designee from each participating province and an executive committee consisting of one (1) legislator from each participating state and/or province who is a member of the delegate council and four (4) of the seven (7) governors/premiers or their designees who are members of the delegate council. The legislator members of the executive committee from each state or province shall be chosen by the legislator members of that state or province. The four (4) governor or premier members of the executive committee shall be chosen by the governors and premiers from among the governors and premiers on the delegate council. At least one (1) of four (4) members representing the governors and premiers on the executive committee must be the premier of a Canadian province. Policy committees may be established to carry out further duties and responsibilities of the Pacific northwest economic region.

ARTICLE IV — Duties and Responsibilities

The delegate council shall have the following duties and responsibilities: facilitate the involvement of other government officials in the development and implementation of specific collaborative initiatives; work with policy-making committees in the development and implementation of specific initiatives; approve general organizational policies developed by the executive committee; provide final approval of the annual budget and staffing structure for the Pacific northwest economic region developed by the executive committee; and other duties and responsibilities as may be established in the rules and regulations of the Pacific northwest economic region. The executive committee shall perform the following duties and

responsibilities: elect the president and vice president of the Pacific northwest economic region; approve and implement general organizational policies; develop the annual budget; devise the annual action plan; act as liaison with other public and private sector entities; review the availability of, and if appropriate apply for: (1) tax exempt status under the laws and regulations of the United States or any state or subdivision thereof; and (2) similar status under the laws and regulations of Canada or any province or subdivision thereof, and approve such rules, regulations, organizational policies, and staffing structure for the Pacific northwest economic region and take such further actions on behalf of the Pacific northwest economic region as may be deemed by the executive committee to be necessary or appropriate to qualify for and maintain such tax exempt or similar status under the applicable laws or regulations; and other duties and responsibilities established in the rules and regulations of the Pacific northwest economic region. The rules and regulations of the Pacific northwest economic region shall establish the procedure for voting.

ARTICLE V — Membership of Policy Committees

Policy committees dealing with specific subject matter may be established by the executive committee.

Each participating state and province shall appoint legislators to sit on these committees in accordance with its own rules and regulations concerning such appointments.

ARTICLE VI — General Provisions

This agreement shall not be construed to limit the powers of any state or province or to amend or repeal or prevent the enactment of any legislation.

History.

I.C., § 67-7802, as added by 1991, ch. 99, § 1, p. 218; am. 1994, ch. 416, § 1, p. 1305.

STATUTORY NOTES

Compiler's Notes.

The Pacific northwest economic region includes Alaska, Idaho, Oregon, Montana, Washington, and the Canadian provinces of British Columbia,

Alberta, Saskatchewan, and the Yukon and Northwest territories. See *<http://www.pnwer.org>*.

§ 67-7803. Cooperative activities. — It is the intent of this act to direct and encourage the establishment of cooperative activities between the seven (7) legislative bodies of the region. The state representatives to the Pacific northwest economic region shall work through appropriate channels to advance consideration of proposals developed by this body.

History.

I.C., § 67-7803, as added by 1991, ch. 99, § 1, p. 218.

STATUTORY NOTES

Compiler's Notes.

The term “this act” near the beginning of the section refers to S.L. 1991, Chapter 99, which is compiled as §§ 67-7801 to 67-7803.

When established in 1991, the Pacific northwest economic region was made up of the states of Alaska, Idaho, Montana, Oregon and Washington and the Canadian provinces of Alberta and British Columbia.

Chapter 79

RESTRICTIONS ON PUBLIC BENEFITS

Sec.

67-7901. Legislative findings.

67-7902. Definitions.

67-7903. Verification of lawful presence — Exceptions — Reporting.

§ 67-7901. Legislative findings. — (1) The legislature hereby finds and declares that it is the public policy of the state of Idaho that all persons eighteen (18) years of age or older shall provide proof that they are lawfully present in the United States prior to receipt of certain public benefits.

(2) The intent of the legislature is not to regulate immigration but to control public expenditures for certain public benefits, not inconsistent with federal law.

History.

I.C., § 67-7901, as added by 2007, ch. 311, § 1, p. 877.

§ 67-7902. Definitions. — As used in this chapter:

(1) “Emergency medical condition” shall have the same meaning as provided in 42 U.S.C. section 1396b(v)(3).

(2) “Federal public benefit” shall have the same meaning as provided in 8 U.S.C. section 1611(c).

(3) “State or local public benefit” shall have the same meaning as provided in 8 U.S.C. section 1621(c).

History.

I.C., § 67-7902, as added by 2007, ch. 311, § 1, p. 877.

§ 67-7903. Verification of lawful presence — Exceptions — Reporting. — (1) Except as otherwise provided in subsection (3) of this section or where exempted by federal law, each agency or political subdivision of this state shall verify the lawful presence in the United States of each natural person eighteen (18) years of age or older who applies for state or local public benefits or for federal public benefits for the applicant.

(2) This section shall be enforced without regard to race, religion, gender, ethnicity or national origin.

(3) Verification of lawful presence in the United States shall not be required:

(a) For any purpose for which lawful presence in the United States is not required by law, ordinance or rule;

(b) For obtaining health care items and services that are necessary for the treatment of an emergency medical condition of the person involved and are not related to an organ transplant procedure;

(c) For short-term, noncash, in-kind emergency disaster relief;

(d) For public health assistance for immunizations with respect to immunizable diseases and testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(e) For programs, services or assistance, such as soup kitchens, crisis counseling and intervention and short-term shelter specified by federal law or regulation that:

(i) Deliver in-kind services at the community level, including services through public or private nonprofit agencies;

(ii) Do not condition the provision of assistance, the amount of assistance provided or the cost of assistance provided on the individual recipient's income or resources; and

(iii) Are necessary for the protection of life or public safety;

(f) For prenatal care;

- (g) For postnatal care not to exceed twelve (12) months; or
- (h) For food assistance for a dependent child under eighteen (18) years of age.

Notwithstanding the provisions of this subsection (3), for the county indigent program, the limitations contained in section 31-3502(18)B., Idaho Code, shall apply.

(4) An agency or a political subdivision shall verify the lawful presence in the United States of each applicant eighteen (18) years of age or older for federal public benefits or state or local public benefits by:

- (a) Employing electronic means to verify an applicant is legally present in the United States; or

- (b) Requiring the applicant to provide:

- (i) An Idaho driver's license or an Idaho identification card issued pursuant to [section 49-2444, Idaho Code](#);

- (ii) A valid driver's license or similar document issued for the purpose of identification by another state or territory of the United States, if such license or document contains a photograph of the individual or such other personal identifying information relating to the individual that the director of the department of health and welfare or, with regard to unemployment compensation benefits, the director of the department of labor finds, by rule, sufficient for purposes of this section;

- (iii) A United States military card or a military dependent's identification card;

- (iv) A United States coast guard merchant mariner card;

- (v) A native American tribal document;

- (vi) A copy of an executive office of immigration review, immigration judge or board of immigration appeals decision, granting asylee status;

- (vii) A copy of an executive office of immigration review, immigration judge or board of immigration appeals decision, indicating that the individual may lawfully remain in the United States;

(viii) Any United States citizenship and immigration service issued document showing refugee or asylee status or that the individual may lawfully remain in the United States;

(ix) Any department of state or customs and border protection issued document showing the individual has been permitted entry into the United States on the basis of refugee or asylee status, or on any other basis that permits the individual to lawfully enter and remain in the United States; or

(x) A valid United States passport; and

(c) Requiring the applicant to provide a valid social security number that has been assigned to the applicant; and

(d) Requiring the applicant to attest, under penalty of perjury and on a form designated or established by the agency or the political subdivision, that:

(i) The applicant is a United States citizen or legal permanent resident; or

(ii) The applicant is otherwise lawfully present in the United States pursuant to federal law.

(5) Notwithstanding the requirements of subsection (4)(b) of this section, the agency or political subdivision may establish by appropriate legal procedure such rules or regulations to ensure that certain individuals lawfully present in the United States receive authorized benefits including, but not limited to, homeless state citizens.

(6) For an applicant who has attested pursuant to subsection (4)(d) of this section stating that the applicant is an alien lawfully present in the United States, verification of lawful presence for federal public benefits or state or local public benefits shall be made through the federal systematic alien verification of entitlement program, which may be referred to as the “SAVE” program, operated by the United States department of homeland security or a successor program designated by the United States department of homeland security. Until such verification of lawful presence is made, the attestation may be presumed to be proof of lawful presence for purposes of this section.

(a) Errors and significant delays by the SAVE program shall be reported to the United States department of homeland security to ensure that the application of the SAVE program is not wrongfully denying benefits to legal residents of this state.

(b) Agencies or political subdivisions may adopt variations of the requirements of subsection (4)(d) of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances in which the verification procedures in this section would impose unusual hardship on a legal resident of this state; except that the variations shall be no less stringent than the requirements of subsection (4)(d) of this section.

(c) A person who knowingly makes a false, fictitious or fraudulent statement or representation in an attestation executed pursuant to subsection (4)(d) or (6)(b) of this section or who knowingly provides a social security number that has not been assigned to him pursuant to subsection (4)(c) of this section shall be:

(i) Guilty of a misdemeanor for the first and second offense; and

(ii) Guilty of a felony for each subsequent offense.

(7) An agency or political subdivision may accept as prima facie evidence of an applicant's lawful presence in the United States the information required in subsection (4) of this section, as may be modified by subsection (5) of this section, when issuing a professional license or a commercial license.

History.

I.C., § 67-7903, as added by 2007, ch. 311, § 1, p. 877; am. 2008, ch. 27, § 19, p. 58; am. 2009, ch. 177, § 20, p. 558; am. 2009, ch. 197, § 1, p. 633; am. 2011, ch. 280, § 1, p. 760; am. 2011, ch. 291, § 28, p. 794.

STATUTORY NOTES

Cross References.

Director of department of health and welfare, § 56-1003.

Director of department of labor, § 72-1333.

Penalty for misdemeanor when not otherwise provided, § 18-113.

Punishment for felony, § 18-112.

Amendments.

The 2008 amendment, by ch. 27, substituted “department of labor” for “department of commerce and labor” in paragraph (4)(b)(i).

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 177, updated the section reference in subsection (3)(h) to reflect the 2009 amendment of § 31-3502.

The 2009 amendment, by ch. 197, added subsections (4)(b)(vi) through (4)(b)(ix) and redesignated former subsection (4)(b)(vi) as subsection (4)(b)(x).

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 280, in paragraph (6)(c), substituted “or who knowingly provides a social security number that has not been assigned to him pursuant to subsection (4)(c) of this section shall be” at the end of the introductory paragraph and the contents of (1) and (2) for “shall be guilty of a misdemeanor.”

The 2011 amendment, by ch. 291, updated the subsection reference in the last sentence in subsection (3) in light of the 2011 amendment of § 31-302.

Compiler’s Notes.

For further information on the systematic alien verification of entitlement program, referred to in subsection (6), see <http://www.uscis.gov/save>.

Section 2 of S.L. 2007, ch. 311 provided: “Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.”

S.L. 2009, Chapter 197 became law without the signature of the governor, effective July 1, 2009.

Chapter 80

REGULATORY TAKINGS

Sec.

67-8001. Declaration of purpose.

67-8002. Definitions.

67-8003. Protection of private property.

67-8004. Short title.

§ 67-8001. Declaration of purpose. — The purpose of this chapter is to establish an orderly, consistent review process that better enables state agencies and local governments to evaluate whether proposed regulatory or administrative actions may result in a taking of private property without due process of law. It is not the purpose of this chapter to expand or reduce the scope of private property protections provided in the state and federal constitutions.

History.

I.C., § 67-8001, as added by 1994, ch. 116, § 1, p. 265; am. 1995, ch. 182, § 1, p. 668.

§ 67-8002. Definitions. — As used in this chapter:

(1) “Local government” means any city, county, taxing district or other political subdivision of state government with a governing body.

(2) “Private property” means all property protected by the constitution of the United States or the constitution of the state of Idaho.

(3) “State agency” means the state of Idaho and any officer, agency, board, commission, department or similar body of the executive branch of the state government.

(4) “Regulatory taking” means a regulatory or administrative action resulting in deprivation of private property that is the subject of such action, whether such deprivation is total or partial, permanent or temporary, in violation of the state or federal constitution.

History.

I.C., § 67-8002, as added by 1994, ch. 116, § 1, p. 265; am. 1995, ch. 182, § 2, p. 668; am. 2003, ch. 141, § 1, p. 409.

§ 67-8003. Protection of private property. — (1) The attorney general shall establish, by October 1, 1994, an orderly, consistent process, including a checklist, that better enables a state agency or local government to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in law. All state agencies and local governments shall follow the guidelines of the attorney general.

(2) An owner of private property that is the subject of such action may submit a written request with the clerk or the agency or entity undertaking the regulatory or administrative action. Not more than twenty-eight (28) days after the final decision concerning the matter at issue, a state agency or local governmental entity shall prepare a written taking analysis concerning the action. Any regulatory taking analysis prepared hereto shall comply with the process set forth in this chapter, including use of the checklist developed by the attorney general pursuant to subsection (1) of this section and shall be provided to the private property owner no longer than forty-two (42) days after the date of filing the request with the clerk or secretary of the agency whose action is questioned. A regulatory taking analysis prepared pursuant to this section shall be considered public information.

(3) A governmental action is voidable if a written taking analysis is not prepared after a request has been made pursuant to this chapter. A private property owner, whose property is the subject of governmental action, affected by a governmental action without the preparation of a requested taking analysis as required by this section may seek judicial determination of the validity of the governmental action by initiating a declaratory judgment action or other appropriate legal procedure. A suit seeking to invalidate a governmental action for noncompliance with subsection (2) of this section must be filed in a district court in the county in which the private property owner's affected private property is located. If the affected property is located in more than one (1) county, the private property owner may file suit in any county in which the affected private property is located.

(4) During the preparation of the taking analysis, any time limitation relevant to the regulatory or administrative actions shall be tolled. Such tolling shall cease when the taking analysis has been provided to the property owner. Both the request for a taking analysis and the taking analysis shall be part of the official record regarding the regulatory or administrative action.

(5) A private property owner is not required to submit a request under this chapter. The decision by the private property owner not to submit a request under this chapter shall not prevent or prohibit the private property owner from seeking any legal or equitable remedy including, but not limited to, the payment of just compensation.

History.

I.C., § 67-8003, as added by 1994, ch. 116, § 1, p. 265; am. 1995, ch. 182, § 3, p. 668; am. 2003, ch. 141, § 2, p. 409; am. 2016, ch. 225, § 1, p. 620.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Amendments.

The 2016 amendment, by ch. 225, in subsection (2), divided the former first sentence into two sentences, substituted “An owner of private property that is the subject of such action may submit a written request” for “Upon the written request of an owner of real property that is the subject of such action, request being filed” in the first sentence, and substituted “private property” for “real property” in the next-to-last sentence; in subsection (3), deleted “real” preceding “property owner” near the beginning of the second sentence, and substituted “private property” for “real property” in the next-to-last and last sentences; and added subsection (5).

CASE NOTES

Federal Action.

Developer's federal takings claim, under the Fifth Amendment, was not ripe, because the developer failed first to show that this section's procedures were inadequate for just compensation. *Hehr v. City of McCall*, 155 Idaho 92, 305 P.3d 536 (2013).

§ 67-8004. Short title. — The provisions of this chapter shall be known and cited as the “Idaho Regulatory Takings Act.”

History.

I.C., § 67-8004, as added by 1994, ch. 116, § 1, p. 265.

Chapter 81

IDAHO HOUSING TRUST FUND

Sec.

67-8101. Purpose.

67-8102. Definitions.

67-8103. Use of funds for loans and grant projects to provide housing — Eligible activities.

67-8104. Eligible organization.

67-8105. Notice of grant and loan application period — Priorities — Criteria for evaluation.

67-8106. Advisory commission.

67-8107. Association to implement the allocation plan.

67-8108. Preconstruction technical assistance.

67-8109. Compliance monitoring.

§ 67-8101. Purpose. — The legislature finds that current economic conditions, federal housing policies and declining resources at the federal, state, and local level adversely affect the ability of low-income and very low-income persons to obtain safe, decent and affordable housing.

The legislature further finds that the state will lose substantial sums allocated to it by the federal government for affordable housing for low-income and very low-income households under the home program and similar funding programs unless matching funds are provided.

The legislature declares that it is therefore in the public interest to provide for a continuously renewable resource known as a housing trust fund from the private and/or public moneys to assist low-income and very low-income citizens in meeting their basic housing needs, and that the needs of very low-income citizens should be given priority.

History.

I.C., § 67-8101, as added by 1992, ch. 267, § 1, p. 824.

§ 67-8102. Definitions. — As used in this chapter:

(1) “Advisory commission” means the housing trust fund advisory commission established in [section 67-8106, Idaho Code](#).

(2) “Advocacy organization” means a not-for-profit organization which conducts, in part or in whole, activities to influence public policy on behalf of low-income or very low-income households.

(3) “Association” means the Idaho housing and finance association.

(4) “Allocation plan” means the plan, approved and revised annually by the advisory commission, providing for the method and priorities of allocation of housing trust fund moneys and providing the procedures for loan and grant application for housing trust fund moneys.

(5) “Community-based organization” means a not-for-profit entity whose governing body includes a majority of members who reside in the community served by the organization.

(6) “Director” means the executive director of the Idaho housing and finance association.

(7) “Home program” means the housing funding program authorized under title II of the Cranston-Gonzalez national affordable housing act ([P.L. 101-625](#)).

(8) “Housing trust fund” means the moneys transmitted to the association by state, federal, local or private sources, and so designated for such purpose.

(9) “Low-income household” means a single person, family or unrelated persons living together whose adjusted income is more than fifty percent (50%), but less than eighty percent (80%), of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States department of housing and urban development for purposes of the home program, or if such program ceases to be funded, then for purposes of section 8 of the U.S. housing act of 1937.

(10) “Very low-income household” means a single person, family or unrelated persons living together whose adjusted income is not more than fifty percent (50%) of the median income of the area of residence, adjusted for family size, as such adjusted income and median income for the area are determined from time to time by the United States department of housing and urban development for purposes of the home program, or if such program ceases to be funded, then for purposes of section 8 of the U.S. housing act of 1937.

History.

I.C., § 67-8102, as added by 1992, ch. 267, § 1, p. 824; am. 1996, ch. 253, § 33, p. 802.

STATUTORY NOTES

Cross References.

Idaho housing and finance association, § 67-6201 et seq.

Federal References.

Title II of the Cranston-Gonzalez National Affordable Housing Act, referred to in subsection (7) of this section, is generally codified as 42 U.S.C.S. § 12721 et seq.

Section 8 of the United States Housing Act of 1937, referred to in subsections (9) and (10) of this section, is compiled as 42 U.S.C.S. § 1437f.

Compiler’s Notes.

For further information on the United States department of housing and urban development’s HOME program, see <https://www.hudexchange.info/programs/home>.

§ 67-8103. Use of funds for loans and grant projects to provide housing — Eligible activities. — (1) The association shall use at least seventy-five percent (75%) of funds from the housing trust fund to assist very low-income households.

(2) Activities eligible for assistance include, but are not limited to:

(a) New construction, rehabilitation, or acquisition of housing units for occupancy by low-income and very low-income households; (b) Rent subsidies in new construction or rehabilitated multifamily units for low-income and very low-income households; (c) Matching funds for social services directly related to providing housing for special-need tenants in assisted projects for low-income and very low-income households; (d) Technical assistance, design and finance services and consultation and administrative costs for eligible nonprofit community or neighborhood-based organizations; (e) Administrative costs for housing assistance groups or organizations which provide housing when such grant or loan will substantially increase the recipient's access to housing funds other than those available under this chapter; (f) Shelters and related services for the homeless;

(g) Mortgage subsidies for new construction or rehabilitation of eligible multifamily units for low-income and very low-income households; (h) Mortgage insurance or guarantees for eligible projects for low-income and very low-income households;

(i) Acquisition of housing units for the purpose of preservation as housing for low-income and very low-income households; and (j) The association may use money from the housing trust fund account to match federal, local, or private money, including without limitation the home program funds, to be used for projects authorized under this chapter.

(3) The association may use money from the [the] housing trust fund account to pay reasonable expenses incurred in connection with the provisions of this chapter.

History.

I.C., § 67-8103, as added by 1992, ch. 267, § 1, p. 824; am. 1996, ch. 253, § 34, p. 802.

STATUTORY NOTES

Compiler's Notes.

For further information on the United States department of housing and urban development's HOME program, see <https://www.hudexchange.info/programs/home>.

Brackets were placed around the repeated instance of “the” in subsection (3), as that word was inadvertently repeated in S.L. 1992, ch. 267, § 1.

§ 67-8104. Eligible organization. — Organizations that may receive assistance from the association under the provisions of this chapter are local governments, local housing authorities, nonprofit community or neighborhood-based organizations, and regional or statewide nonprofit housing assistance or advocacy organizations, and for-profit housing developers.

History.

I.C., § 67-8104, as added by 1992, ch. 267, § 1, p. 824; am. 1996, ch. 253, § 35, p. 802.

§ 67-8105. Notice of grant and loan application period — Priorities — Criteria for evaluation. — (1) During each calendar year in which funds are available for use by the association from the housing trust fund, the association shall announce to all known interested parties and through major media in each of the seven (7) planning regions of the state, the grant and loan application period specified in the current allocation plan of the advisory commission in the manner specified in the allocation plan.

(2) The association shall give preference for applications based on the following criteria or other criteria:

- (a) The degree funds will be used to match other funds;
- (b) Recipient contributions to total project costs and contributions from other sources such as professional, craft and trade services, as well as lender interest rate subsidies;
- (c) Local government project contributions in the form of infrastructure improvements, fee waivers and others;
- (d) Projects that encourage ownership, management, and other project-related responsibility opportunities for tenants;
- (e) Projects that demonstrate a strong probability of serving the original target group or income level for a period of at least forty (40) years;
- (f) The demonstrated ability, stability and resources to implement the project;
- (g) Projects which demonstrate serving the greatest need;
- (h) Projects that provide housing for persons and families with the lowest incomes; and
- (i) Projects to be owned by nonprofit organizations.

History.

I.C., § 67-8105, as added by 1992, ch. 267, § 1, p. 824; am. 1996, ch. 253, § 36, p. 802.

STATUTORY NOTES

Cross References.

Planning regions, § 67-4711.

§ 67-8106. Advisory commission. — There is hereby created the Idaho housing trust fund advisory commission. The advisory commission shall consist of seven (7) members, appointed by the governor. At least two (2) members shall be representatives of advocacy organizations or community-based organizations engaged in the development or operation of housing for low-income and very low-income households. Two (2) of the members shall represent the real estate brokers, one (1) member from the Idaho association of realtors, and one (1) member from the Idaho real estate commission. One (1) member shall represent the association; one (1) member shall represent the Idaho department of commerce; and one (1) member shall represent the Idaho department of health and welfare. The advisory commission shall, if possible, have at least one (1) member from each of the seven (7) planning regions of the state. Members appointed to the commission shall serve a term of two (2) years. However, four (4) members first appointed under the provisions of this chapter shall serve a term of one (1) year, and three (3) members shall serve a term of two (2) years. Individual terms shall be chosen by lot at the initial meeting of the advisory commission.

Members of the advisory commission shall not be entitled to compensation, but shall receive reimbursement for actual and reasonable expenses incurred in the performance of their duties.

The advisory commission shall meet at least annually and its duties and responsibilities are: (1) To review and approve annually an allocation plan and a proposed budget therefor submitted by the association setting forth priorities, policies and procedures for the year's expenditure of housing trust fund moneys, including policies which assure equitable distribution of funds statewide; (2) Prior to approving the allocation plan, to publish notice of the proposed plan, requesting written comments thereon and holding one (1) or more public hearings thereon to solicit public comment; (3) To monitor and review all allocations of funds under the housing trust fund; (4) To make recommendations to the legislature for further legislation that may be necessary in the area of affordable housing.

History.

I.C., § 67-8106, as added by 1992, ch. 267, § 1, p. 824; am. 1996, ch. 253, § 37, p. 802.

STATUTORY NOTES

Cross References.

Department of commerce, § 67-4701 et seq.

Department of health and welfare, § 56-1001 et seq.

Idaho real estate commission, § 54-2005.

Planning regions, § 67-4711.

Compiler's Notes.

For more on the Idaho association of realtors®, referred to in the first paragraph, see <https://idahorealtors.com>.

§ 67-8107. Association to implement the allocation plan. — The association shall implement the procedures and policies as set forth in the allocation plan and may use its discretion in interpreting the allocation plan. The association shall not be required to implement an allocation plan of the advisory commission which it deems to be too costly to administer or which the association deems not consistent with its legislative mandate under the provisions of chapter 62, title 67, Idaho Code.

History.

I.C., § 67-8107, as added by 1992, ch. 267, § 1, p. 824; am. 1996, ch. 253, § 38, p. 802.

§ 67-8108. Preconstruction technical assistance. — (1) The association may use moneys from the housing trust fund to provide preconstruction technical assistance to eligible recipients seeking to construct, rehabilitate, or finance housing-related services for the low-income and very low-income persons. In so doing, the association shall emphasize providing preconstruction technical assistance services to rural areas and small cities and towns. The association may contract with nonprofit organizations to provide this technical assistance. The association may contract for any of the following services:

- (a) Financial planning and packaging for housing projects, including alternative ownership programs, such as limited equity partnerships and syndications; (b) Project design, architectural planning and siting; (c) Compliance with planning requirements;
- (d) Securing matching resources for project developments; (e) Maximizing local government contributions to project development in the form of land donations, infrastructure improvements, waivers of development fees, locally and state-managed funds, zoning variances, or creative local planning; (f) Coordination with local planning, economic development, and environmental, social service and recreational activities; (g) Construction and materials management; and (h) Project maintenance and management.

(2) The association may publish requests for proposals which specify contract performance standards, award criteria and contractor requirements. In evaluating proposals, the association shall consider the ability of the contractor to provide technical assistance to low-income and very low-income persons and to persons with special housing needs.

History.

I.C., § 67-8108, as added by 1992, ch. 267, § 1, p. 824; am. 1996, ch. 253, § 39, p. 802.

§ 67-8109. Compliance monitoring. — The director shall monitor the activities of recipients of grants and loans under the provisions of this chapter to determine compliance with the terms and conditions set forth in its application or stated by the association in connection with the grant or loan.

History.

I.C., § 67-8109, as added by 1992, ch. 267, § 1, p. 824; am. 1996, ch. 253, § 40, p. 802.

STATUTORY NOTES

Effective Dates.

Section 41 of S.L. 1996, ch. 253 declared an emergency. Approved March 14, 1996.

Chapter 82

DEVELOPMENT IMPACT FEES

Sec.

67-8201. Short title.

67-8202. Purpose.

67-8203. Definitions.

67-8204. Minimum standards and requirements for development impact fees ordinances.

67-8204A. Intergovernmental agreements.

67-8205. Development impact fee advisory committee.

67-8206. Procedure for the imposition of development impact fees.

67-8207. Proportionate share determination.

67-8208. Capital improvements plan.

67-8209. Credits.

67-8210. Earmarking and expenditure of collected development impact fees.

67-8211. Refunds.

67-8212. Appeals.

67-8213. Collection.

67-8214. Other powers and rights not affected.

67-8215. Transition.

67-8216. Severability.

§ 67-8201. Short title. — This chapter shall be known and may be cited as the “Idaho Development Impact Fee Act.”

History.

I.C., § 67-8201, as added by 1992, ch. 282, § 1, p. 860.

CASE NOTES

Application.

Where the city attempted to impose an impact fee as a precondition to the issuance of a building permit, summary judgment was granted in favor of the Idaho Building Contractors Association because the Idaho Development Impact Fee Act did not apply to the city because the Act applied only to cities in counties with populations greater than 200,000. Idaho Bldg. Contractors Ass’n v. City of Coeur d’Alene, 126 Idaho 740, 890 P.2d 326 (1995).

OPINIONS OF ATTORNEY GENERAL

Tax or Fee.

Although it was difficult to determine with certainty whether provisions of county highway district’s ordinance allowing for discretionary application of impact fees outside of designated benefit zones, which required payment of fees without any apparent determination of need for services as a result of new development and lacked clarity on accounting for revenues, was a disguised tax in violation of Idaho Const., Art. VII, §§ 4 and 5, such provisions were indicative of a tax rather than a fee. OAG 93-5.

§ 67-8202. Purpose. — The legislature finds that an equitable program for planning and financing public facilities needed to serve new growth and development is necessary in order to promote and accommodate orderly growth and development and to protect the public health, safety and general welfare of the citizens of the state of Idaho. It is the intent by enactment of this chapter to:

(1) Ensure that adequate public facilities are available to serve new growth and development;

(2) Promote orderly growth and development by establishing uniform standards by which local governments may require that those who benefit from new growth and development pay a proportionate share of the cost of new public facilities needed to serve new growth and development;

(3) Establish minimum standards for the adoption of development impact fee ordinances by governmental entities;

(4) Ensure that those who benefit from new growth and development are required to pay no more than their proportionate share of the cost of public facilities needed to serve new growth and development and to prevent duplicate and ad hoc development requirements; and

(5) Empower governmental entities which are authorized to adopt ordinances to impose development impact fees.

History.

I.C., § 67-8202, as added by 1992, ch. 282, § 1, p. 860.

CASE NOTES

Cited *Buckskin Props. v. Valley County*, 154 Idaho 486, 300 P.3d 18 (2013).

OPINIONS OF ATTORNEY GENERAL

State Payment.

The language contained in the Idaho development impact fee act does not indicate that the state was to be included for the purposes of payment of development impact fees; in fact, the fiscal note attached to S.L. 1992, ch. 282 (H.B. 805) indicates that the legislative intent was not to include the state within the purview of the act; therefore, the state is excluded from compliance with impact fee ordinances enacted pursuant to the act. OAG 93-5.

§ 67-8203. Definitions. — As used in this chapter:

(1) “Affordable housing” means housing affordable to families whose incomes do not exceed eighty percent (80%) of the median income for the service area or areas within the jurisdiction of the governmental entity.

(2) “Appropriate” means to legally obligate by contract or otherwise commit to use by appropriation or other official act of a governmental entity.

(3) “Capital improvements” means improvements with a useful life of ten (10) years or more, by new construction or other action, which increase the service capacity of a public facility.

(4) “Capital improvement element” means a component of a comprehensive plan adopted pursuant to chapter 65, title 67, Idaho Code, which component meets the requirements of a capital improvements plan pursuant to this chapter.

(5) “Capital improvements plan” means a plan adopted pursuant to this chapter that identifies capital improvements for which development impact fees may be used as a funding source.

(6) “Developer” means any person or legal entity undertaking development, including a party that undertakes the subdivision of property pursuant to [sections 50-1301 through 50-1334, Idaho Code](#).

(7) “Development” means any construction or installation of a building or structure, or any change in use of a building or structure, or any change in the use, character or appearance of land, which creates additional demand and need for public facilities or the subdivision of property that would permit any change in the use, character or appearance of land. As used in this chapter, “development” shall not include activities that would otherwise be subject to payment of the development impact fee if such activities are undertaken by a taxing district, as defined in [section 63-201, Idaho Code](#), or by an authorized public charter school, as defined in [section 33-5202A, Idaho Code](#), in the course of carrying out its statutory responsibilities, unless the adopted impact fee ordinance expressly includes taxing districts or public charter schools as being subject to development impact fees.

(8) “Development approval” means any written authorization from a governmental entity that authorizes the commencement of a development.

(9) “Development impact fee” means a payment of money imposed as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve development. This term is also referred to as an impact fee in this chapter. The term does not include the following:

- (a) A charge or fee to pay the administrative, plan review, or inspection costs associated with permits required for development;

- (b) Connection or hookup charges;

- (c) Availability charges for drainage, sewer, water, or transportation charges for services provided directly to the development; or

- (d) Amounts collected from a developer in a transaction in which the governmental entity has incurred expenses in constructing capital improvements for the development if the owner or developer has agreed to be financially responsible for the construction or installation of the capital improvements, unless a written agreement is made pursuant to [section 67-8209\(3\), Idaho Code](#), for credit or reimbursement.

(10) “Development requirement” means a requirement attached to a developmental approval or other governmental action approving or authorizing a particular development project including, but not limited to, a rezoning, which requirement compels the payment, dedication or contribution of goods, services, land, or money as a condition of approval.

(11) “Extraordinary costs” means those costs incurred as a result of an extraordinary impact.

(12) “Extraordinary impact” means an impact that is reasonably determined by the governmental entity to:

- (a) Result in the need for system improvements, the cost of which will significantly exceed the sum of the development impact fees to be generated from the project or the sum agreed to be paid pursuant to a development agreement as allowed by [section 67-8214\(2\), Idaho Code](#); or

(b) Result in the need for system improvements that are not identified in the capital improvements plan.

(13) “Fee payer” means that person who pays or is required to pay a development impact fee.

(14) “Governmental entity” means any unit of local government that is empowered in this enabling legislation to adopt a development impact fee ordinance.

(15) “Impact fee.” See development impact fee.

(16) “Land use assumptions” means a description of the service area and projections of land uses, densities, intensities, and population in the service area over at least a twenty (20) year period.

(17) “Level of service” means a measure of the relationship between service capacity and service demand for public facilities.

(18) “Manufactured home” means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein, except that such term shall include any structure that meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of housing and urban development and complies with the standards established under [42 U.S.C. 5401, et seq.](#)

(19) “Modular building” is as defined in [section 39-4301, Idaho Code.](#)

(20) “Present value” means the total current monetary value of past, present, or future payments, contributions or dedications of goods, services, materials, construction or money.

(21) “Project” means a particular development on an identified parcel of land.

(22) “Project improvements” means site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project.

(23) “Proportionate share” means that portion of the cost of system improvements determined pursuant to [section 67-8207, Idaho Code](#), which reasonably relates to the service demands and needs of the project.

(24) “Public facilities” means:

(a) Water supply production, treatment, storage and distribution facilities;

(b) Wastewater collection, treatment and disposal facilities;

(c) Roads, streets and bridges, including rights-of-way, traffic signals, landscaping and any local components of state or federal highways;

(d) Storm water collection, retention, detention, treatment and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;

(e) Parks, open space and recreation areas, and related capital improvements; and

(f) Public safety facilities, including law enforcement, fire, emergency medical and rescue and street lighting facilities.

(25) “Recreational vehicle” means a vehicular type unit primarily designed as temporary quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle.

(26) “Service area” means any defined geographic area identified by a governmental entity or by intergovernmental agreement in which specific public facilities provide service to development within the area defined, on the basis of sound planning or engineering principles or both.

(27) “Service unit” means a standardized measure of consumption, use, generation or discharge attributable to an individual unit of development calculated in accordance with generally accepted engineering or planning standards for a particular category of capital improvements.

(28) “System improvements,” in contrast to project improvements, means capital improvements to public facilities designed to provide service to a service area including, without limitation, the type of improvements described in [section 50-1703, Idaho Code](#).

(29) “System improvement costs” means costs incurred for construction or reconstruction of system improvements, including design, acquisition, engineering and other costs attributable thereto, and also including, without limitation, the type of costs described in [section 50-1702\(h\), Idaho Code](#), to provide additional public facilities needed to serve new growth and development. For clarification, system improvement costs do not include:

- (a) Construction, acquisition or expansion of public facilities other than capital improvements identified in the capital improvements plan;
- (b) Repair, operation or maintenance of existing or new capital improvements;
- (c) Upgrading, updating, expanding or replacing existing capital improvements to serve existing development in order to meet stricter safety, efficiency, environmental or regulatory standards;
- (d) Upgrading, updating, expanding or replacing existing capital improvements to provide better service to existing development;
- (e) Administrative and operating costs of the governmental entity unless such costs are attributable to development of the capital improvements plan, as provided in [section 67-8208, Idaho Code](#); or
- (f) Principal payments and interest or other finance charges on bonds or other indebtedness except financial obligations issued by or on behalf of the governmental entity to finance capital improvements identified in the capital improvements plan.

History.

[I.C., § 67-8203](#), as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 366, § 1, p. 1226; am. 2002, ch. 347, § 1, p. 982; am. 2007, ch. 252, § 16, p. 737; am. 2008, ch. 389, § 1, p. 1068; am. 2019, ch. 70, § 1, p. 164.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 252, rewrote subsection (19), which formerly read: “Modular building’ means any building or building component, other than a manufactured home, which is constructed according to standards contained in the Uniform Building Code, as adopted or any amendments thereto, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site.”

The 2008 amendment, by ch. 389, added the last sentence in subsection (7).

The 2019 amendment, by ch. 70, in the last sentence in subsection (7), substituted “[section 63-201, Idaho Code](#), or by an authorized public charter school, as defined in [section 33-5202A, Idaho Code](#) in the course of carrying out its statutory responsibilities” for “[section 63-201, Idaho Code](#), in the course of carrying out the taxing district’s public responsibilities” near the middle and inserted “or public charter schools” near the end; and, in subsection (12), redesignated former paragraphs (i) and (ii) as paragraphs (a) and (b).

Effective Dates.

Section 9 of S.L. 2002, ch. 347 provided: “This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of [section 67-8204\(15\)\(b\), Idaho Code](#), as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to [section 67-8204, Idaho Code](#), as amended pursuant to this act.”

Section 2 of S.L. 2008, ch. 389 declared an emergency. Approved April 9, 2008.

Section 2 of S.L. 2019, ch. 70 declared an emergency. Approved March 12, 2019.

CASE NOTES

Road Development Agreement.

Road development agreement, requiring subdivision developers to contribute to road improvement costs, was not a prohibited development impact fee under subsection (9), because the developers voluntarily entered into it. *Buckskin Props. v. Valley County*, 154 Idaho 486, 300 P.3d 18 (2013).

§ 67-8204. Minimum standards and requirements for development impact fees ordinances. — Governmental entities which comply with the requirements of this chapter may impose by ordinance development impact fees as a condition of development approval on all developments.

(1) A development impact fee shall not exceed a proportionate share of the cost of system improvements determined in accordance with [section 67-8207, Idaho Code](#). Development impact fees shall be based on actual system improvement costs or reasonable estimates of such costs.

(2) A development impact fee shall be calculated on the basis of levels of service for public facilities adopted in the development impact fee ordinance of the governmental entity that are applicable to existing development as well as new growth and development. The construction, improvement, expansion or enlargement of new or existing public facilities for which a development impact fee is imposed must be attributable to the capacity demands generated by the new development.

(3) A development impact fee ordinance shall specify the point in the development process at which the development impact fee shall be collected. The development impact fee may be collected no earlier than the commencement of construction of the development, or the issuance of a building permit or a manufactured home installation permit, or as may be agreed by the developer and the governmental entity.

(4) A development impact fee ordinance shall be adopted in accordance with the procedural requirements of [section 67-8206, Idaho Code](#).

(5) A development impact fee ordinance shall include a process whereby the governmental agency shall allow the developer, upon request by the developer, to provide a written individual assessment of the proportionate share of development impact fees under the guidelines established by this chapter which shall be set forth in the ordinance. The individual assessment process shall permit consideration of studies, data, and any other relevant information submitted by the developer to adjust the amount of the fee. The decision by the governmental agency on an application for an individual assessment shall include an explanation of the calculation of the impact fee,

including an explanation of factors considered under [section 67-8207, Idaho Code](#), and shall specify the system improvement(s) for which the impact fee is intended to be used.

(6) A development impact fee ordinance shall provide a process whereby a developer shall receive, upon request, a written certification of the development impact fee schedule or individual assessment for a particular project, which shall establish the development impact fee so long as there is no material change to the particular project as identified in the individual assessment application, or the impact fee schedule. The certification shall include an explanation of the calculation of the impact fee including an explanation of factors considered under [section 67-8207, Idaho Code](#). The certification shall also specify the system improvement(s) for which the impact fee is intended to be used.

(7) A development impact fee ordinance shall include a provision for credits in accordance with the requirements of [section 67-8209, Idaho Code](#).

(8) A development impact fee ordinance shall include a provision prohibiting the expenditure of development impact fees except in accordance with the requirements of [section 67-8210, Idaho Code](#).

(9) A development impact fee ordinance may provide for the imposition of a development impact fee for system improvement costs incurred subsequent to adoption of the ordinance to the extent that new growth and development will be served by the system improvements.

(10) A development impact fee ordinance may exempt all or part of a particular development project from development impact fees provided that such project is determined to create affordable housing, provided that the public policy which supports the exemption is contained in the governmental entity's comprehensive plan and provided that the exempt development's proportionate share of system improvements is funded through a revenue source other than development impact fees.

(11) A development impact fee ordinance shall provide that development impact fees shall only be spent for the category of system improvements for which the fees were collected and either within or for the benefit of the service area in which the project is located.

(12) A development impact fee ordinance shall provide for a refund of development impact fees in accordance with the requirements of [section 67-8211, Idaho Code](#).

(13) A development impact fee ordinance shall establish for a procedure for timely processing of applications for determination by the governmental entity regarding development impact fees applicable to a project, individual assessment of development impact fees, credits or reimbursements to be allowed or paid under [section 67-8209, Idaho Code](#), and extraordinary impact.

(14) A development impact fee ordinance shall specify when an application for an individual assessment of development impact fees shall be permitted to be made by a developer or fee payer. An application for an individual assessment of development impact fees shall be permitted sufficiently in advance of the time that the developer or fee payer may seek a building permit or related permits so that the issuance of a building permit or related permits will not be delayed.

(15) A development impact fee ordinance shall provide for appeals regarding development impact fees in accordance with the requirements of [section 67-8212, Idaho Code](#).

(16) A development impact fee ordinance must provide a detailed description of the methodology by which costs per service unit are determined. The development impact fee per service unit may not exceed the amount determined by dividing the costs of the capital improvements described in [section 67-8208\(1\)\(f\), Idaho Code](#), by the total number of projected service units described in [section 67-8208\(1\)\(g\), Idaho Code](#). If the number of new service units projected over a reasonable period of time is less than the total number of new service units shown by the approved land use assumptions at full development of the service area, the maximum impact fee per service unit shall be calculated by dividing the costs of the part of the capital improvements necessitated by and attributable to the projected new service units described in [section 67-8208\(1\)\(g\), Idaho Code](#), by the total projected new service units described in that section.

(17) A development impact fee ordinance shall include a schedule of development impact fees for various land uses per unit of development. The ordinance shall provide that a developer shall have the right to elect to pay a

project's proportionate share of system improvement costs by payment of development impact fees according to the fee schedule as full and complete payment of the development project's proportionate share of system improvement costs, except as provided in [section 67-8214\(3\), Idaho Code](#).

(18) After payment of the development impact fees or execution of an agreement for payment of development impact fees, additional development impact fees or increases in fees may not be assessed unless the number of service units increases or the scope or schedule of the development changes. In the event of an increase in the number of service units or schedule of the development changes, the additional development impact fees to be imposed are limited to the amount attributable to the additional service units or change in scope of the development.

(19) No system for the calculation of development impact fees shall be adopted which subjects any development to double payment of impact fees.

(20) A development impact fee ordinance shall exempt from development impact fees the following activities:

- (a) Rebuilding the same amount of floor space of a structure which was destroyed by fire or other catastrophe, providing the structure is rebuilt and ready for occupancy within two (2) years of its destruction;
- (b) Remodeling or repairing a structure which does not increase the number of service units;
- (c) Replacing a residential unit, including a manufactured home, with another residential unit on the same lot, provided that the number of service units does not increase;
- (d) Placing a temporary construction trailer or office on a lot;
- (e) Constructing an addition on a residential structure which does not increase the number of service units; and
- (f) Adding uses that are typically accessory to residential uses, such as tennis courts or clubhouse, unless it can be clearly demonstrated that the use creates a significant impact on the capacity of system improvements.

(21) A development impact fee will be assessed for installation of a modular building, manufactured home or recreational vehicle unless the fee

payer can demonstrate by documentation such as utility bills and tax records, either:

- (a) That a modular building, manufactured home or recreational vehicle was legally in place on the lot or space prior to the effective date of the development impact fee ordinance; or
- (b) That a development impact fee has been paid previously for the installation of a modular building, manufactured home or recreational vehicle on that same lot or space.

(22) A development impact fee ordinance shall include a process for dealing with a project which has extraordinary impacts.

(23) A development impact fee ordinance shall provide for the calculation of a development impact fee in accordance with generally accepted accounting principles. A development impact fee shall not be deemed invalid because payment of the fee may result in an incidental benefit to owners or developers within the service area other than the person paying the fee.

(24) A development impact fee ordinance shall include a description of acceptable levels of service for system improvements.

(25) Any provision of a development impact fee ordinance that is inconsistent with the requirements of this chapter shall be null and void and that provision shall have no legal effect. A partial invalidity of a development impact fee ordinance shall not affect the validity of the remaining portions of the ordinance that are consistent with the requirements of this chapter.

History.

I.C., § 67-8204, as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 366, § 2, p. 1226; am. 2002, ch. 347, § 2, p. 982.

STATUTORY NOTES

Compiler's Notes.

The “s” enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 9 of S.L. 2002, ch. 347 provided: “This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of [section 67-8204\(15\)\(b\), Idaho Code](#), as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to [section 67-8204, Idaho Code](#), as amended pursuant to this act.”

OPINIONS OF ATTORNEY GENERAL

Benefitting Areas.

Ordinance creating development impact fee legislation must provide a rational nexus between the impact fees assessed to a new development and the need for additional capital improvements; there must also be a rational nexus between the expenditure for capital facilities and the benefits accruing to the property in which the impact fees are assessed. OAG 93-5.

State Compliance.

The language contained in the Idaho development impact fee act does not indicate that the state was to be included for the purposes of payment of development impact fees; in fact, the fiscal note attached to S.L. 1992, ch. 282 (H.B. 805) indicates that the legislative intent was not to include the state within the purview of the act; therefore, the state is excluded from compliance with impact fee ordinances enacted pursuant to the act. OAG 93-5.

§ 67-8204A. Intergovernmental agreements. — Governmental entities as defined in section 67-8203(14), Idaho Code, which are jointly affected by development are authorized to enter into intergovernmental agreements with each other or with highway districts, fire districts, water districts, sewer districts, recreational water and sewer districts or irrigation districts for the purpose of developing joint plans for capital improvements or for the purpose of agreeing to collect and expend development impact fees for system improvements, or both, provided that such agreement complies with any applicable state laws. Governmental entities are also authorized to enter into agreements with the Idaho transportation department for the expenditure of development impact fees pursuant to a developer's agreement under section 67-8214, Idaho Code.

History.

I.C., § 67-8204A, as added by 1996, ch. 366, § 3, p. 1226; am. 2007, ch. 167, § 1, p. 496.

STATUTORY NOTES

Cross References.

Idaho transportation department, § 40-501 et seq.

Amendments.

The 2007 amendment, by ch. 167, inserted “fire districts, water districts, sewer districts, recreational water and sewer districts or irrigation districts” in the first sentence.

§ 67-8205. Development impact fee advisory committee. — (1) Any governmental entity which is considering or which has adopted a development impact fee ordinance, shall establish a development impact fee advisory committee.

(2) The development impact fee advisory committee shall be composed of not fewer than five (5) members appointed by the governing authority of the governmental entity. Two (2) or more members shall be active in the business of development, building or real estate. An existing planning or zoning commission may serve as the development impact fee advisory committee if the commission includes two (2) or more members who are active in the business of development, building or real estate; otherwise, two (2) such members who are not employees or officials of a governmental entity shall be appointed to the committee.

(3) The development impact fee advisory committee shall serve in an advisory capacity and is established to:

- (a) Assist the governmental entity in adopting land use assumptions;
- (b) Review the capital improvements plan, and proposed amendments, and file written comments;
- (c) Monitor and evaluate implementation of the capital improvements plan;
- (d) File periodic reports, at least annually, with respect to the capital improvements plan and report to the governmental entity any perceived inequities in implementing the plan or imposing the development impact fees; and
- (e) Advise the governmental entity of the need to update or revise land use assumptions, capital improvements plan and development impact fees.

(4) The governmental entity shall make available to the advisory committee, upon request, all financial and accounting information, professional reports in relation to other development and implementation of

land use assumptions, the capital improvements plan and periodic updates of the capital improvements plan.

History.

I.C., § 67-8205, as added by 1992, ch. 282, § 1, p. 860.

§ 67-8206. Procedure for the imposition of development impact fees.

— (1) A development impact fee shall be imposed by a governmental entity in compliance with the provisions set forth in this section.

(2) A capital improvements plan shall be developed in coordination with the development impact fee advisory committee utilizing the land use assumptions most recently adopted by the appropriate land use planning agency or agencies.

(3) A governmental entity that seeks to consider adoption, amendment, or repeal of a capital improvements plan shall hold at least one (1) public hearing. The governmental entity shall publish a notice of the time, place and purpose of the hearing or hearings not fewer than fifteen (15) nor more than thirty (30) days before the scheduled date of the hearing, in a newspaper of general circulation within the jurisdiction of the governmental entity. Such notices shall also include a statement that the governmental entity shall make available to the public, upon request, the following: proposed land use assumptions, a copy of the proposed capital improvements plan or amendments thereto, and a statement that any member of the public affected by the capital improvements plan or amendments shall have the right to appear at the public hearing and present evidence regarding the proposed capital improvements plan or amendments. The governmental entity shall send notice of the intent to hold a public hearing by mail to any person who has requested in writing notification of the hearing date at least fifteen (15) days prior to the hearing date, provided that the governmental entity may require that any person making such request renew the request for notification, not more frequently than once each year, in accordance with a schedule determined by the governmental entity, in order to continue receiving such notices.

(4) If the governmental entity makes a material change in the capital improvements plan or amendment, further notice and hearing may be provided before the governmental entity adopts the revision if the governmental entity makes a finding that further notice and hearing are required in the public interest.

(5) Either following or concurrently with adoption of the initial or amended capital improvements plan, a governmental entity shall conduct a public hearing to consider adoption of an ordinance authorizing the imposition of development impact fees or any amendment thereof. Notice of the hearing shall be provided in the same manner as set forth in subsection (3) of this section for adoption of a capital improvements plan, and such hearing, at the option of the governmental entity, may be combined with the public hearing held to adopt, amend or repeal the capital improvements plan.

(6) Nothing contained in this section shall be construed to alter the procedures for adoption of an ordinance by the governmental entity. Provided, however, a development impact fee ordinance shall not be adopted as an emergency measure but may be read for the first and second times on successive days prior to the public hearing to consider its adoption and shall not take effect sooner than thirty (30) days following its adoption.

History.

I.C., § 67-8206, as added by 1992, ch. 282, § 1, p. 860; am. 2006, ch. 321, § 1, p. 1019.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 321, in subsection (3), rewrote the first sentence, which formerly read: “At least one (1) public hearing shall be held to consider adoption, amendment, or repeal of a capital improvement plan,” in the second sentence, substituted “The governmental entity shall publish a notice of the time, place and purpose of the hearing or hearings” for “Two (2) notices, at least one (1) week apart of the time, place and purpose of the hearing shall be published,” and deleted the former third sentence, which read: “A second notice of the hearing on adoption of the capital improvements plan, containing the same information, shall be published in the same manner at least seven (7) days before the scheduled date of the hearing”; in subsection (5), substituted “Either following or concurrently with” for “Following,” inserted “or amended,” and added the language beginning “and such hearing, at the option of the governmental entity”; and in subsection (6), inserted “but may be read for the first and

second times on successive days prior to the public hearing to consider its adoption,” and substituted “following its” for “subsequent to.”

§ 67-8207. Proportionate share determination. — (1) All development impact fees shall be based on a reasonable and fair formula or method under which the development impact fee imposed does not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in the provision of system improvements to serve the new development. The proportionate share is the cost attributable to the new development after the governmental entity considers the following: (i) any appropriate credit, offset or contribution of money, dedication of land, or construction of system improvements; (ii) payments reasonably anticipated to be made by or as a result of a new development in the form of user fees and debt service payments; (iii) that portion of general tax and other revenues allocated by the jurisdiction to system improvements; and (iv) all other available sources of funding such system improvements.

(2) In determining the proportionate share of the cost of system improvements to be paid by the developer, the following factors shall be considered by the governmental entity imposing the development impact fee and accounted for in the calculation of the impact fee:

- (a) The cost of existing system improvements within the service area or areas;
- (b) The means by which existing system improvements have been financed;
- (c) The extent to which the new development will contribute to the cost of system improvements through taxation, assessment, or developer or landowner contributions, or has previously contributed to the cost of system improvements through developer or landowner contributions.
- (d) The extent to which the new development is required to contribute to the cost of existing system improvements in the future.
- (e) The extent to which the new development should be credited for providing system improvements, without charge to other properties within the service area or areas;
- (f) Extraordinary costs, if any, incurred in serving the new development;

(g) The time and price differential inherent in a fair comparison of fees paid at different times; and

(h) The availability of other sources of funding system improvements including, but not limited to, user charges, general tax levies, intergovernmental transfers, and special taxation. The governmental entity shall develop a plan for alternative sources of revenue.

History.

I.C., § 67-8207, as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 366, § 4, p. 1226; am. 2002, ch. 347, § 3, p. 982.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 2002, ch. 347 provided: “This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of [section 67-8204\(15\)\(b\), Idaho Code](#), as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to [section 67-8204, Idaho Code](#), as amended pursuant to this act.”

OPINIONS OF ATTORNEY GENERAL

Benefitting Areas.

Ordinance creating development impact fee legislation must provide a rational nexus between the impact fees assessed to a new development and the need for additional capital improvements; there must also be a rational nexus between the expenditure for capital facilities and the benefits accruing to the property in which the impact fees are assessed. OAG 93-5.

§ 67-8208. Capital improvements plan. — (1) Each governmental entity intending to impose a development impact fee shall prepare a capital improvements plan. That portion of the cost of preparing a capital improvements plan which is attributable to determining the development impact fee may be funded by a one (1) time ad valorem levy which does not exceed two one-hundredths percent (.02%) of market value or by a surcharge imposed by ordinance on the collection of a development impact fee which surcharge does not exceed the development's proportionate share of the cost of preparing the plan. For governmental entities required to undertake comprehensive planning pursuant to chapter 65, title 67, Idaho Code, such capital improvements plan shall be prepared and adopted according to the requirements contained in the local planning act, section 67-6509, Idaho Code, and shall be included as an element of the comprehensive plan. The capital improvements plan shall be prepared by qualified professionals in fields relating to finance, engineering, planning and transportation. The persons preparing the plan shall consult with the development impact fee advisory committee.

The capital improvements plan shall contain all of the following:

- (a) A general description of all existing public facilities and their existing deficiencies within the service area or areas of the governmental entity and a reasonable estimate of all costs and a plan to develop the funding resources related to curing the existing deficiencies including, but not limited to, the upgrading, updating, improving, expanding or replacing of such facilities to meet existing needs and usage;
- (b) A commitment by the governmental entity to use other available sources of revenue to cure existing system deficiencies where practical;
- (c) An analysis of the total capacity, the level of current usage, and commitments for usage of capacity of existing capital improvements, which shall be prepared by a qualified professional planner or by a qualified engineer licensed to perform engineering services in this state;
- (d) A description of the land use assumptions by the government entity;

- (e) A definitive table establishing the specific level or quantity of use, consumption, generation or discharge of a service unit for each category of system improvements and an equivalency or conversion table establishing the ratio of a service unit to various types of land uses, including residential, commercial, agricultural and industrial;
- (f) A description of all system improvements and their costs necessitated by and attributable to new development in the service area based on the approved land use assumptions, to provide a level of service not to exceed the level of service adopted in the development impact fee ordinance;
- (g) The total number of service units necessitated by and attributable to new development within the service area based on the approved land use assumptions and calculated in accordance with generally accepted engineering or planning criteria;
- (h) The projected demand for system improvements required by new service units projected over a reasonable period of time not to exceed twenty (20) years;
- (i) Identification of all sources and levels of funding available to the governmental entity for the financing of the system improvements;
- (j) If the proposed system improvements include the improvement of public facilities under the jurisdiction of the state of Idaho or another governmental entity, then an agreement between governmental entities shall specify the reasonable share of funding by each unit, provided the governmental entity authorized to impose development impact fees shall not assume more than its reasonable share of funding joint improvements, nor shall the agreement permit expenditure of development impact fees by a governmental entity which is not authorized to impose development impact fees unless such expenditure is pursuant to a developer agreement under [section 67-8214, Idaho Code](#); and
- (k) A schedule setting forth estimated dates for commencing and completing construction of all improvements identified in the capital improvements plan.

(2) The governmental entity imposing a development impact fee shall update the capital improvements plan at least once every five (5) years. The five (5) year period shall commence from the date of the original adoption of the capital improvements plan. The updating of the capital improvements plan shall be made in accordance with procedures set forth in [section 67-8206, Idaho Code](#).

(3) The governmental entity must annually adopt a capital budget.

(4) The capital improvements plan shall be updated in conformance with the provisions of subsection (2) of this section each time a governmental entity proposes the amendment, modification or adoption of a development impact fee ordinance.

History.

[I.C., § 67-8208](#), as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 322, § 71, p. 1029; am. 1996, ch. 366, § 5, p. 1226; am. 2002, ch. 347, § 4, p. 982.

STATUTORY NOTES

Cross References.

Development impact fee advisory committee, § 67-8205.

Amendments.

This section was amended by two 1996 acts — ch. 322, § 71, effective January 1, 1997 and ch. 366, § 5, effective July 1, 1996 — which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 322, § 71, in subsection (1) in the second sentence deleted “exempt from the provisions of sections 63-2225 and 63-923, Idaho Code,” following “ad valorem levy”; in subdivision (1)(f) deleted “and” preceding “attributable to new” and at the end of subdivision (1)(h) substituted a semicolon for a period.

The 1996 amendment, by ch. 366, § 5, in subdivision (1)(f) deleted “and” preceding “attributable to new”; at the end of subdivision (1)(h) substituted a semicolon for a period; in subdivision (1)(j) substituted “reasonable” for “proportionate” following “entities shall specify the” and substituted the

words beginning with “governmental entity authorized” and ending with “Idaho Code” for “agreement shall not permit expenditure of development impact fees by a governmental entity which is not authorized to impose development impact fees nor shall the governmental entity authorized to impose development impact fees assume more than its proportionate share of funding joint improvements.”

Effective Dates.

Section 9 of S.L. 2002, ch. 347 provided: “This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of [section 67-8204\(15\)\(b\), Idaho Code](#), as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to [section 67-8204, Idaho Code](#), as amended pursuant to this act.”

§ 67-8209. Credits. — (1) In the calculation of development impact fees for a particular project, credit or reimbursement shall be given for the present value of any construction of system improvements or contribution or dedication of land or money required by a governmental entity from a developer for system improvements of the category for which the development impact fee is being collected, including such system improvements paid for pursuant to a local improvement district. Credit or reimbursement shall not be given for project improvement.

(2) In the calculation of development impact fees for a particular project, credit shall be given for the present value of all tax and user fee revenue generated by the developer, within the service area where the impact fee is being assessed and used by the governmental agency for system improvements of the category for which the development impact fee is being collected. If the amount of credit exceeds the proportionate share for the particular project, the developer shall receive a credit on future impact fees for the amount in excess of the proportionate share. The credit may be applied by the developer as an offset against future impact fees only in the service area where the credit was generated.

(3) If a developer is required to construct, fund or contribute system improvements in excess of the development project's proportionate share of system improvement costs, including such system improvements paid for pursuant to a local improvement district, the developer shall receive a credit on future impact fees or be reimbursed at the developer's choice for such excess construction, funding or contribution from development impact fees paid by future development which impacts the system improvements constructed, funded or contributed by the developer(s) or fee payer.

(4) If credit or reimbursement is due to the developer pursuant to this section, the governmental entity shall enter into a written agreement with the fee payer, negotiated in good faith, prior to the construction, funding or contribution. The agreement shall provide for the amount of credit or the amount, time and form of reimbursement.

History.

I.C., § 67-8209, as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 366, § 6, p. 1226; am. 1999, ch. 291, § 10, p. 722; am. 2002, ch. 347, § 5, p. 982.

STATUTORY NOTES

Compiler's Notes.

The “s” enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 9 of S.L. 2002, ch. 347 provided: “This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of [section 67-8204\(15\)\(b\), Idaho Code](#), as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to [section 67-8204, Idaho Code](#), as amended pursuant to this act.”

§ 67-8210. Earmarking and expenditure of collected development impact fees. — (1) An ordinance imposing development impact fees shall provide that all development impact fee funds shall be maintained in one (1) or more interest-bearing accounts within the capital projects fund. Accounting records shall be maintained for each category of system improvements and the service area in which the fees are collected. Interest earned on development impact fees shall be considered funds of the account on which it is earned, and not funds subject to section 57-127, Idaho Code, and shall be subject to all restrictions placed on the use of development impact fees under the provisions of this chapter.

(2) Expenditures of development impact fees shall be made only for the category of system improvements and within or for the benefit of the service area for which the development impact fee was imposed as shown by the capital improvements plan and as authorized in this chapter. Development impact fees shall not be used for any purpose other than system improvement costs to create additional improvements to serve new growth.

(3) As part of its annual audit process, a governmental entity shall prepare an annual report:

(a) Describing the amount of all development impact fees collected, appropriated, or spent during the preceding year by category of public facility and service area; and

(b) Describing the percentage of tax and revenues other than impact fees collected, appropriated or spent for system improvements during the preceding year by category of public facility and service area.

(4) Collected development impact fees must be expended within eight (8) years from the date they were collected, on a first-in, first-out (FIFO) basis, except that the development impact fees collected for wastewater collection, treatment and disposal and drainage facilities must be expended within twenty (20) years. Any funds not expended within the prescribed times shall be refunded pursuant to [section 67-8211, Idaho Code](#). A

governmental entity may hold the fees for longer than eight (8) years if it identifies, in writing:

- (a) A reasonable cause why the fees should be held longer than eight (8) years; and
- (b) An anticipated date by which the fees will be expended but in no event greater than eleven (11) years from the date they were collected.

History.

I.C., § 67-8210, as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 366, § 7, p. 1226; am. 2002, ch. 347, § 6, p. 982; am. 2006, ch. 321, § 2, p. 1019.

STATUTORY NOTES

Amendments.

The 2006 amendment, by ch. 321, throughout subsection (4), substituted “eight (8) years” for “five (5) years”; and, in subsection (4)(b), substituted “eleven (11)years” for “eight (8) years.”

Compiler’s Notes.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 9 of S.L. 2002, ch. 347 provided: “This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of [section 67-8204\(15\)\(b\), Idaho Code](#), as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to [section 67-8204, Idaho Code](#), as amended pursuant to this act.”

§ 67-8211. Refunds. — (1) Any governmental entity which adopts a development impact fee ordinance shall provide for refunds upon the request of an owner of property on which a development impact fee has been paid if:

- (a) Service is available but never provided;
- (b) A building permit or permit for installation of a manufactured home is denied or abandoned;
- (c) The governmental entity, after collecting the fee when service is not available, has failed to appropriate and expend the collected development impact fees pursuant to [section 67-8210\(4\), Idaho Code](#); or
- (d) The fee payer pays a fee under protest and a subsequent review of the fee paid or the completion of an individual assessment determines that the fee paid exceeded the proportionate share to which the governmental entity was entitled to receive.

(2) When the right to a refund exists, the governmental entity is required to send a refund to the owner of record within ninety (90) days after it is determined by the governmental entity that a refund is due.

(3) A refund shall include a refund of interest at one-half (1/2) the legal rate provided for in [section 28-22-104, Idaho Code](#), from the date on which the fee was originally paid.

(4) Any person entitled to a refund shall have standing to sue for a refund under the provisions of this chapter if there has not been a timely payment of a refund pursuant to subsection (2) of this section.

History.

[I.C., § 67-8211](#), as added by 1992, ch. 282, § 1, p. 860; am. 2002, ch. 347, § 7, p. 982.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 2002, ch. 347 provided: “This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of [section 67-8204\(15\)\(b\), Idaho Code](#), as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to [section 67-8204, Idaho Code](#), as amended pursuant to this act.”

§ 67-8212. Appeals. — (1) A governmental entity which adopts a development impact fee ordinance shall provide for administrative appeals by the developer or fee payer from any discretionary action or inaction by or on behalf of the governmental entity.

(2) A fee payer may pay a development impact fee under protest in order to obtain a development approval or building permit. A fee payer making such payment shall not be estopped from exercising the right of appeal provided in this chapter, nor shall such fee payer be estopped from receiving a refund of any amount deemed to have been illegally collected.

(3) A governmental entity which adopts a development impact fee ordinance shall provide for mediation by a qualified independent party, upon voluntary agreement by the fee payer and the governmental entity, to address a disagreement related to the impact fee for proposed development. The ordinance shall provide that mediation may take place at any time during the appeals process and participation in mediation does not preclude the fee payer from pursuing other remedies provided for in this section. The ordinance shall provide that mediation costs will be shared equally by the fee payer and the governmental entity.

History.

I.C., § 67-8212, as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 366, § 8, p. 1226.

§ 67-8213. Collection. — A governmental entity may provide in a development impact fee ordinance the means for collection of development impact fees, including, but not limited to:

(1) Additions to the fee for reasonable interest and penalties for non-payment or late payment;

(2) Withholding of the building permit or other governmental approval until the development impact fee is paid;

(3) Withholding of utility services until the development impact fee is paid; and

(4) Imposing liens for failure to timely pay a development impact fee following procedures contained in chapter 5, title 45, Idaho Code.

A governmental entity that discovers an error in its impact fee formula that results in assessment or payment of more than a proportionate share shall, at the time of assessment on a case by case basis, adjust the fee to collect no more than a proportionate share or discontinue the collection of any impact fees until the error is corrected by ordinance.

History.

I.C., § 67-8213, as added by 1992, ch. 282, § 1, p. 860; am. 2002, ch. 347, § 8, p. 982.

STATUTORY NOTES

Effective Dates.

Section 9 of S.L. 2002, ch. 347 provided: “This act shall be in full force and effect on and after July 1, 2002; provided however, that governmental agencies using an alternative methodology under the provisions of [section 67-8204\(15\)\(b\), Idaho Code](#), as said section existed immediately prior to the effective date of this act, shall have until March 31, 2003, to implement a capital improvement plan-based impact fee program pursuant to [section 67-8204, Idaho Code](#), as amended pursuant to this act.”

§ 67-8214. Other powers and rights not affected. — (1) Nothing in this chapter shall prevent a governmental entity from requiring a developer to construct reasonable project improvements in conjunction with a development project.

(2) Nothing in this chapter shall be construed to prevent or prohibit private agreements between property owners or developers, the Idaho transportation department and governmental entities in regard to the construction or installation of system improvements or providing for credits or reimbursements for system improvement costs incurred by a developer including interproject transfers of credits or providing for reimbursement for project improvements which are used or shared by more than one (1) development project. If it can be shown that a proposed development has a direct impact on a public facility under the jurisdiction of the Idaho transportation department, then the agreement shall include a provision for the allocation of impact fees collected from the developer for the improvement of the public facility by the Idaho transportation department.

(3) Nothing in this chapter shall obligate a governmental entity to approve development which results in an extraordinary impact.

(4) Nothing in this chapter shall obligate a governmental entity to approve any development request which may reasonably be expected to reduce levels of service below minimum acceptable levels established in the development impact fee ordinance.

(5) Nothing in this chapter shall be construed to create any additional right to develop real property or diminish the power of counties or cities in regulating the orderly development of real property within their boundaries.

(6) Nothing in this chapter shall work to limit the use by governmental entities of the power of eminent domain or supersede or conflict with requirements or procedures authorized in the Idaho Code for local improvement districts or general obligation bond issues.

(7) Nothing herein shall restrict or diminish the power of a governmental entity to annex property into its territorial boundaries or exclude property from its territorial boundaries upon request of a developer or owner, or to

impose reasonable conditions thereon, including the recovery of project or system improvement costs required as a result of such voluntary annexation.

History.

I.C., § 67-8214, as added by 1992, ch. 282, § 1, p. 860; am. 1996, ch. 366, § 9, p. 1226.

STATUTORY NOTES

Cross References.

Idaho transportation department, § 40-501.

§ 67-8215. Transition. — (1) The provisions of this chapter shall not be construed to repeal any existing laws authorizing a governmental entity to impose fees or require contributions or property dedications for capital improvements. All ordinances imposing development impact fees shall be brought into conformance with the provisions of this chapter within one (1) year after the effective date of this chapter. Impact fees collected and developer agreements entered into prior to the expiration of the one (1) year period shall not be invalid by reason of this chapter. After adoption of a development impact fee ordinance, in accordance with the provisions of this chapter, notwithstanding any other provision of law, development requirements for system improvements shall be imposed by governmental entities only by way of development impact fees imposed pursuant to and in accordance with the provisions of this chapter.

(2) Notwithstanding any other provisions of this chapter, that portion of a project for which a valid building permit has been issued or construction has commenced prior to the effective date of a development impact fee ordinance shall not be subject to additional development impact fees so long as the building permit remains valid or construction is commenced and is pursued according to the terms of the permit or development approval.

History.

I.C., § 67-8215, as added by 1992, ch. 282, § 1, p. 860.

STATUTORY NOTES

Compiler's Notes.

The phrase “the effective date of this chapter” in the second sentence in subsection (1) refers to the effective date of S.L. 1992, Chapter 282, which was effective July 1, 1992.

§ 67-8216. Severability. — The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

History.

I.C., § 67-8216, as added by 1992, ch. 282, § 1, p. 860.

Chapter 83

IDAHO FOOD QUALITY ASSURANCE INSTITUTE

Sec.

67-8301. Idaho food quality assurance institute created.

67-8302. Commissioners — Chairman — Appointments.

67-8303. Vice-chairman, executive director and other personnel —
Appointments — Quorum.

67-8304. Powers of the institute.

67-8305. Deposit and disbursement of funds.

67-8306. Limit on state liability — Compensation and expenses.

§ 67-8301. Idaho food quality assurance institute created. — There is hereby created an independent public body corporate and politic to be known as the Idaho food quality assurance institute. The institute shall be exempt from taxation. The institute shall be an entity of the state of Idaho as provided in the tort claims act, chapter 9, title 6, Idaho Code, and shall be entitled to all the protection as provided in the tort claims act, chapter 9, title 6, Idaho Code.

History.

I.C., § 67-8301, as added by 1996, ch. 358, § 1, p. 1204; am. 1998, ch. 202, § 2, p. 719.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 1998, ch. 202 provided: “Legislative Intent. It is the intent of the legislature that a sublease be entered into between the State of Idaho, the College of Southern Idaho and the Idaho Food Quality Assurance Institute so that the Institute can occupy and perform food quality testing at the Food Quality Assurance Laboratory located in Twin Falls, Idaho. It is further the intent of the legislature that should the Institute cease to exist or is unable to provide food quality testing services for the benefit of Idaho agriculture, then the Idaho Department of Agriculture, Idaho Alfalfa Seed Commission, Idaho Mint Commission, Idaho Potato Commission and Idaho Wheat Commission may continue to contract for food quality testing and the Food Quality Assurance Laboratory upon the same sublease conditions as were made available to the Idaho Food Quality Assurance Institute.”

Effective Dates.

Section 2 of S.L. 1996, ch. 358 which provided: “The provisions of this act [chapter] shall be null and void and of no force and effect on and after June 30, 2002,” was repealed by S.L. 1998, ch. 202, § 2.

§ 67-8302. Commissioners — Chairman — Appointments. — The governor shall appoint ten (10) persons to be commissioners of the Idaho food quality assurance institute. The commissioners shall serve at the pleasure of the governor and shall include the following:

(1) One (1) representative of a row crop industry; (2) One (1) representative of an orchard industry; (3) One (1) representative of a grain industry; (4) One (1) representative of a specialty crop industry; (5) One (1) representative of a livestock industry; (6) One (1) consumer;

(7) One (1) representative of the Idaho department of agriculture; (8) One (1) representative of the college of southern Idaho; (9) One (1) scientist with practical experience in quality certification procedures and standards; (10) One (1) representative of the private laboratory industry.

The governor shall appoint a chairman from among the nine (9) commissioners. The commissioners shall be appointed for terms of four (4) years, except that all vacancies shall be filled for the unexpired term. A commissioner shall hold office until a successor has been appointed and qualifies. A certificate of the appointment or reappointment of any commissioner shall be filed in the office of the secretary of state and in the office of the institute, and the certificate shall be conclusive evidence of the due and proper appointment of the commissioner. The governor, the state treasurer, the state controller and the administrator of the division of financial management shall serve as advisors to the commissioners of the institute.

In addition, two (2) members of the Idaho senate, one (1) from the majority party and one (1) from the minority party, and two (2) members of the Idaho house of representatives, one (1) from the majority party and one (1) from the minority party, may be appointed by the legislative council to serve as advisors to the commissioners of the institute. Such appointments shall be for a term of two (2) years beginning on January 1 of each odd-numbered year, and no appointee shall serve more than two (2) terms. Actual and necessary expenses and per diem shall be allowed to the legislative advisors as provided for members of the legislative council, and shall be paid from legislative funds.

History.

I.C., § 67-8302, as added by 1996, ch. 358, § 1, p. 1204; am. 1997, ch. 302, § 3, p. 894; am. 2008, ch. 208, § 1, p. 661.

STATUTORY NOTES**Cross References.**

Administrator of division of financial management, § 67-1910.

Idaho department of agriculture, § 22-101 et seq.

Legislative council, § 67-427.

Secretary of state, § 67-901 et seq.

State controller, § 67-1001 et seq.

State treasurer, § 67-1201 et seq.

Amendments.

The 2008 amendment, by ch. 208, in subsections (1) through (3), substituted “industry” for “commodity commission”; in subsection (4), substituted “crop industry” for “commodity commission”; in subsection (5), substituted “a livestock industry” for “an animal product commodity commission”; and deleted the former fourth sentence in subsection (10), which read: “The terms of the first nine (9) commissioners shall end on July 1, 2000; the terms of four (4) of the commissioners next appointed shall end on July 1, 2002, and the terms of the remaining five (5) commissioners next appointed shall end on July 1, 2004.”

Compiler’s Notes.

For more on the college of southern Idaho, referred to in subsection (8), see <http://www.csi.edu/>.

§ 67-8303. Vice-chairman, executive director and other personnel — Appointments — Quorum. — As soon as possible after their appointment the commissioners shall organize for the transaction of business by choosing a vice-chairman and by adopting bylaws and rules suitable to the purpose of organizing the institute and conducting the business thereof. The powers of the institute shall be vested in the commissioners. A majority of the commissioners of the institute then in office shall constitute a quorum for the transaction of any business or the exercise of any power or function of the institute, and the affirmative vote of a majority of the commissioners present at any meeting, at which there is a quorum present, shall be necessary for any action taken by the institute. The commissioners may hold any of their meetings by telephone or video facilities. No vacancy in the membership of the commissioners shall impair the right of a quorum to exercise all the rights and perform all the duties of the institute. The commissioners may appoint an executive director, who shall serve at the pleasure of the commissioners, and such other officers and employees as the commissioners may require for the performance of their duties and shall prescribe the duties and compensation of each officer and employee.

History.

I.C., § 67-8303, as added by 1996, ch. 358, § 1, p. 1204.

§ 67-8304. Powers of the institute. — The Idaho food quality assurance institute is an independent public body corporate and politic, exercising public and essential governmental functions, and having all the powers which are hereby declared to be public purposes necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(1) To provide an ongoing quality assurance testing program for Idaho agricultural commodities by analyzing and documenting the food safety practices of Idaho producers and such other agricultural commodities by documenting the food safety practices of other producers as feasible;

(2) To provide for the management and operation of the quality assurance laboratory at Twin Falls, Idaho, and to provide and facilitate educational opportunities;

(3) To establish fees for testing and analysis of agricultural commodities and for any other services to be provided to benefit agricultural commodity producers by the laboratory or the institute;

(4) To provide for certification of testing results;

(5) To sue and to be sued, to have a seal and to alter the same at pleasure, to have perpetual succession, and to make and execute agreements, contracts and other instruments necessary or convenient to the exercise of the powers and duties of the institute;

(6) To own, hold and improve personal property; to purchase, lease, obtain options upon, or acquire by gift, grant, bequest, devise or otherwise, any personal property or any interest therein;

(7) To make and from time to time amend and repeal bylaws and rules, not inconsistent with this act, to carry into effect the powers and purposes of the institute.

History.

I.C., § 67-8304, as added by 1996, ch. 358, § 1, p. 1204; am. 1997, ch. 302, § 4, p. 894; am. 1998, ch. 202, § 3, p. 721.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 1998, ch. 202 provided: “Legislative Intent. It is the intent of the legislature that a sublease be entered into between the State of Idaho, the College of Southern Idaho and the Idaho Food Quality Assurance Institute so that the Institute can occupy and perform food quality testing at the Food Quality Assurance Laboratory located in Twin Falls, Idaho. It is further the intent of the legislature that should the Institute cease to exist or is unable to provide food quality testing services for the benefit of Idaho agriculture, then the Idaho Department of Agriculture, Idaho Alfalfa Seed Commission, Idaho Mint Commission, Idaho Potato Commission and Idaho Wheat Commission may continue to contract for food quality testing and the Food Quality Assurance Laboratory upon the same sublease conditions as were made available to the Idaho Food Quality Assurance Institute.”

Compiler’s Notes.

The term “this act” in the first paragraph and in subsection (7) refers to S.L. 1996, Chapter 358, which is codified as § 67-8301 to 67-8304.

For further information on the Idaho food quality assurance laboratory, referred to in subsection (2), see <https://agri.idaho.gov/main/laboratories/lab-test-3>.

§ 67-8305. Deposit and disbursement of funds. — (1) Immediately upon receipt, all moneys received by the institute shall be deposited in one (1) or more separate accounts in the name of the institute in one (1) or more banks or trust companies approved under chapter 27, title 67, Idaho Code, as state depositories. The institute shall designate such banks or trust companies. All funds so deposited are hereby continuously appropriated for the purpose of carrying out the provisions of this chapter.

(2) Funds can be withdrawn or paid out of such accounts only upon checks or other orders upon such accounts signed by two (2) officers designated by the institute.

(3) The right is reserved to the state of Idaho to audit the funds of the institute at any time.

(4) On or before January 15 of each year, the institute shall file with the senate agricultural affairs committee, the house agricultural affairs committee, the legislative services office, the state controller, and the division of financial management, a report showing the annual income and expenses by standard classification of the institute during the preceding fiscal year. The report shall also include an estimate of income to the institute for the current and next fiscal year and a projection of anticipated expenses by category for the current and next fiscal year. From and after January 15, 1998, the report shall also include a reconciliation between the estimated income and expenses projected and the actual income and expenses of the preceding fiscal year.

(5) All moneys received or expended by the institute shall be audited annually by a certified public accountant designated by the institute, who shall furnish a copy of such audit to the director of legislative services and to the senate agricultural affairs committee and the house agricultural affairs committee. The audit shall be completed within ninety (90) days following the close of the fiscal year.

(6) The expenditures of the institute are expressly exempted from the provisions of sections 67-2007 and 67-2008, Idaho Code.

History.

I.C., § 67-8305, as added by 1997, ch. 302, § 5, p. 894; am. 2003, ch. 32, § 46, p. 115.

STATUTORY NOTES

Cross References.

Director of legislative services, § 67-701.

Division of financial management, § 67-1910.

Legislative services office, § 67-701 et seq.

State controller, § 67-1001 et seq.

§ 67-8306. Limit on state liability — Compensation and expenses. —

All expenses incurred by the institute in performing its duties and exercising its powers shall be without liability on the part of the state. No member of the institute shall receive any compensation for his services as such member, but members and employees of the institute and other persons acting under the direction of the institute shall be reimbursed, if approved by the institute, for their actual and reasonable expenses incurred in performing their duties under this chapter.

History.

I.C., § 67-8306, as added by 1997, ch. 302, § 6, p. 894.

STATUTORY NOTES

Cross References.

Idaho food quality assurance institute, § 67-8301.

Regulation of per diem traveling expenses, § 67-2004.

Effective Dates.

Section 7 of S.L. 1997, ch. 302 declared an emergency. Approved March 24, 1997.

Chapter 84

[RESERVED]

Idaho Code Ch. 85

• Title 67 •, « Ch. 85 »

Chapter 85

IDAHO HALL OF FAME ADVISORY BOARD

Sec.

67-8501. Purpose. [Repealed.]

67-8502. Creation — Composition. [Repealed.]

67-8503. Duties and responsibilities. [Repealed.]

67-8504. Idaho hall of fame building advisory board fund. [Repealed.]

§ 67-8501. Purpose. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 4, effective April 3, 2012.

History.

I.C., § 67-8501, as added by 1997, ch. 395, § 1, p. 1256.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 255 provided: “Legislative Intent. It is the intent of the Legislature to repeal statutes involving inactive programs that require appointment of members of the Legislature. In addition to the repealed sections in this act, it is legislative intent that no legislative appointment be made for the purposes of the Idaho Commemorative Silver Medallions as provided in [Section 67-1223, Idaho Code](#), until the State Treasurer issues a new series of medallions at which time such legislative appointments would be appropriate.”

§ 67-8502. Creation — Composition. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 4, effective April 3, 2012.

History.

I.C., § 67-8502, as added by 1997, ch. 395, § 1, p. 1256.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 255 provided: “Legislative Intent. It is the intent of the Legislature to repeal statutes involving inactive programs that require appointment of members of the Legislature. In addition to the repealed sections in this act, it is legislative intent that no legislative appointment be made for the purposes of the Idaho Commemorative Silver Medallions as provided in [Section 67-1223, Idaho Code](#), until the State Treasurer issues a new series of medallions at which time such legislative appointments would be appropriate.”

§ 67-8503. Duties and responsibilities. [Repealed.]

Repealed by S.L. 2012, ch. 255, § 4, effective April 3, 2012.

History.

I.C., § 67-8503, as added by 1997, ch. 395, § 1, p. 1256.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 255 provided: “Legislative Intent. It is the intent of the Legislature to repeal statutes involving inactive programs that require appointment of members of the Legislature. In addition to the repealed sections in this act, it is legislative intent that no legislative appointment be made for the purposes of the Idaho Commemorative Silver Medallions as provided in [Section 67-1223, Idaho Code](#), until the State Treasurer issues a new series of medallions at which time such legislative appointments would be appropriate.”

**§ 67-8504. Idaho hall of fame building advisory board fund.
[Repealed.]**

Repealed by S.L. 2012, ch. 255, § 4, effective April 3, 2012.

History.

I.C., § 67-8504, as added by 1997, ch. 395, § 1, p. 1256.

STATUTORY NOTES

Legislative Intent.

Section 1 of S.L. 2012, ch. 255 provided: “Legislative Intent. It is the intent of the Legislature to repeal statutes involving inactive programs that require appointment of members of the Legislature. In addition to the repealed sections in this act, it is legislative intent that no legislative appointment be made for the purposes of the Idaho Commemorative Silver Medallions as provided in [Section 67-1223, Idaho Code](#), until the State Treasurer issues a new series of medallions at which time such legislative appointments would be appropriate.”

Chapter 86
LEWIS AND CLARK TRAIL COMMITTEE

Sec.

67-8601. Governor's Idaho Lewis and Clark trail committee fund.

§ 67-8601. Governor's Idaho Lewis and Clark trail committee fund.

— There is hereby created the governor's Idaho Lewis and Clark trail committee fund in the state treasury. Moneys in the fund may consist of donations, ticket sale proceeds, contributions, appropriations, grants, gifts, bequests or other sources and shall be utilized in support of the efforts of the advisory board to preserve the Lewis and Clark trail.

History.

I.C., § 67-8601, as added by 1998, ch. 314, § 1, p. 1036; am. 2011, ch. 87, § 1, p. 183.

STATUTORY NOTES

Cross References.

Lewis and Clark commemorative plates, § 49-420B.

Amendments.

The 2011 amendment, by ch. 87, deleted “and other needs related directly to overseeing and coordinating the bicentennial commemoration of the Lewis and Clark corps of discovery” from the end of the section.

Compiler's Notes.

For further information on the Lewis and Clark Trail in Idaho, see <http://www.lewisandclarktrail.com/section3/idaho.htm>.

Chapter 87

IDAHO BOND BANK AUTHORITY

Sec.

67-8701. Short title.

67-8702. Definitions.

67-8703. Bond bank authority created — Membership — Vacancies — Officers — Quorum — Compensation.

67-8704. Retention of outside services.

67-8705. Powers and duties of the authority.

67-8706. Annual report.

67-8707. Negotiability of bonds.

67-8708. Bonds as legal investments.

67-8709. Tax exemption.

67-8710. Issuance of bonds — Form of issuance — Sale price — Payment or refunding of bonds — Terms of agreement with bondholder.

67-8711. Purchase and disposition of bonds.

67-8712. Presumption of validity.

67-8713. Reserve fund — Additional funds and accounts.

67-8714. Personal liability.

67-8715. Exemption from execution and sale.

67-8716. Unlimited sales tax receipts pledge.

67-8717. Lien of pledge.

67-8718. Credit enhancement or liquidity.

67-8719. Surety for deposits by bank.

67-8720. Expenses of administration.

67-8721. Swaps.

67-8722. Municipal bonds.

67-8723. Complete authority.

67-8724. Rights not to be impaired by state.

67-8725. Payment transfer — Notice of nonpayment — State financial assistance intercept mechanism — State treasurer duties — Interest and penalty provisions.

67-8726. Cooperation by government agencies.

67-8727. Alternative intercept procedure.

67-8728. Limited exemption from intercept provisions. [Repealed.]

67-8729. Idaho bond bank administrative fund.

§ 67-8701. Short title. — This chapter shall be known and may be cited as the “Idaho Bond Bank Authority Act.”

History.

I.C., § 67-8701, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8702. Definitions. — As used in this chapter:

(1) “Authority” or “bond bank authority” means the Idaho bond bank authority.

(2) “Bonds” means bonds, notes or other obligations of the authority issued under this chapter.

(3) “Municipal bond” means a bond, note or other obligation, including a loan, lease or installment sale agreement, issued or undertaken by a municipality for any purpose authorized by law.

(4) “Municipality” means any county, city, municipal corporation, school district, irrigation district, sewer district, water district, highway district or other special purpose district or political subdivision of the state established by law.

(5) “State sales tax account” means any fund or account in the state treasury in which state sales tax moneys are deposited, but only to the extent moneys in such fund or account are attributable to the state sales tax moneys.

History.

I.C., § 67-8702, as added by 2001, ch. 130, § 1, p. 451; am. 2002, ch. 148, § 1, p. 426; am. 2005, ch. 389, § 1, p. 1250.

STATUTORY NOTES

Effective Dates.

Section 10 of S.L. 2005, ch. 389 declared an emergency. Approved April 14, 2005.

§ 67-8703. Bond bank authority created — Membership — Vacancies — Officers — Quorum — Compensation. — (1) There is hereby created an independent public body corporate and politic to be known as the Idaho bond bank authority. The authority is an instrumentality of the state within the state treasurer's office but has a legal existence independent of and separate from the state with continuing succession until its existence is terminated by law.

(2) The authority shall consist of the following five (5) members:

(a) The state treasurer, or his designee, who shall serve as ex officio chairman;

(b) One (1) member of the senate, who shall be appointed by and serve at the pleasure of the president pro tempore of the senate for a term of two (2) years;

(c) One (1) member of the house of representatives, who shall be appointed by and serve at the pleasure of the speaker of the house of representatives for a term of two (2) years; and

(d) Two (2) members appointed by the governor, who shall serve at the pleasure of the governor for terms of four (4) years, and who shall be residents of the state and qualified voters at the time of appointment.

(3) A vacancy occurring other than by expiration of term shall be filled in the same manner as the original appointment and for the balance of the unexpired term.

(4) The members may elect, by majority vote, a secretary and a treasurer. The secretary and treasurer may be nonmembers, and the same person may be elected to serve both as secretary and treasurer.

(5) Three (3) members of the authority shall constitute a quorum. Action may be taken and motions and resolutions adopted by the authority at any meeting by the affirmative vote of a majority of members present. A vacancy in the membership of the authority does not impair the right of a quorum to exercise all the powers and perform all the duties of the authority.

(6) Members of the authority shall be compensated as provided by [section 59-509\(h\), Idaho Code](#), except for those members with salaries established in [section 59-501, Idaho Code](#).

History.

[I.C., § 67-8703](#), as added by 2001, ch. 130, § 1, p. 451; am. 2013, ch. 105, § 1, p. 248.

STATUTORY NOTES

Cross References.

State treasurer, § 67-1201 et seq.

Amendments.

The 2013 amendment, by ch. 105, added “except for those members with salaries established in [section 59-501, Idaho Code](#)” at the end of subsection (6).

§ 67-8704. Retention of outside services. — The authority may contract for and engage the services of bond counsel, consultants, experts and others whose services the authority considers necessary or appropriate.

History.

I.C., § 67-8704, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8705. Powers and duties of the authority. — The authority shall have the following powers and duties:

- (1) To sue and be sued in its own name;
- (2) To adopt and from time to time alter an official seal;
- (3) To adopt and from time to time amend or repeal rules and bylaws;
- (4) To accept and receive public grants or private gifts, bequests or other moneys;
- (5) To purchase municipal bonds on original issue or previously issued, from the municipality issuer or from any other source, and to obtain funds for such other purposes of the authority authorized by this chapter by:
 - (a) Issuing bonds payable from or secured by municipal bonds of one (1) or more municipalities;
 - (b) Pledging or otherwise obligating, for and in the name and on behalf of the state as its agent and instrumentality, sales tax revenues of the state as a source of payment or security for bonds issued by the authority;
 - (c) Establishing debt service reserve funds or other reserve funds;
 - (d) Obtaining private credit enhancement for bonds issued by the authority;
 - (e) Investing moneys held by the authority, as proceeds or to pay or secure bonds issued by the authority, in such securities or obligations as are described in the indenture, trust agreement or other instrument providing for the authority's issuance of the bonds;
 - (f) Investing any moneys held by the authority, in excess of funds described in paragraph (e) of this subsection, in any securities or other obligations in which a trustee may invest as provided by law;
 - (g) Taking any other actions and entering into such other contracts and agreements as the authority may determine to be necessary or appropriate to accomplish the purposes of the authority and this chapter; or

(h) Facilitating the purchase of notes from municipalities to be utilized by a municipality in purchasing, leasing or lease-purchasing tangible personal property when the note was otherwise legally issued and authorized by a municipality and the purchase of the note from a municipality does not violate the state constitution.

(6) To charge such fees to municipalities or other potential sellers of municipal bonds in connection with application for and receipt of financing under this chapter and interest and other charges on or in connection with municipal bonds purchased as it may deem necessary or appropriate to cover all costs and expenses of the authority and its operations, and to set such other terms and conditions on its services or purchase of municipal bonds as may be necessary or appropriate to secure the bonds or improve their marketability or to otherwise achieve the purposes of the authority;

(7) To take any and all actions, execute any and all contracts, including payment of any arbitrage rebate as may be necessary to obtain or maintain exemption of interest on bonds issued by the authority from federal income taxes; provided however, that nothing shall prevent the authority from issuing bonds bearing interest subject to federal income tax; and

(8) To develop underwriting policies or guidelines in connection with municipal bonds purchased by the authority.

History.

I.C., § 67-8705, as added by 2001, ch. 130, § 1, p. 451; am. 2003, ch. 93, § 1, p. 278; am. 2005, ch. 389, § 2, p. 1250.

STATUTORY NOTES

Effective Dates.

Section 10 of S.L. 2005, ch. 389 declared an emergency. Approved April 14, 2005.

§ 67-8706. Annual report. — Before January 1 of each year, the authority shall prepare and submit to the governor and the legislature a report of its activities for the preceding fiscal year. The report shall set out a complete operating and financial statement which covers its operations during the previous fiscal year, and shall include an estimate of the amount of bonds of the authority to be issued during the upcoming fiscal year.

History.

I.C., § 67-8706, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8707. Negotiability of bonds. — Notwithstanding any other provision of law, a bond issued under this chapter is fully negotiable, and a holder or owner of a bond, by accepting the bond, is conclusively considered to have agreed that the bond is fully negotiable.

History.

I.C., § 67-8707, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8708. Bonds as legal investments. — Notwithstanding any other provisions of law, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees and other fiduciaries, may legally invest sinking funds, money or other funds belonging to them or within their control in bonds issued under this chapter.

History.

I.C., § 67-8708, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8709. Tax exemption. — All property of the authority is public property exempt from all taxes and special assessments of the state or a municipality. All bonds issued under this chapter are issued by a body corporate and politic of this state, and the bonds and the interest and income on and from the bonds and their transfer, and all fees, charges, funds, revenues, interest, income and other moneys or property received by the authority from or in connection with municipal bonds or other assets or operations of the authority, are exempt from every kind of taxation by the state or a municipality.

History.

I.C., § 67-8709, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8710. Issuance of bonds — Form of issuance — Sale price — Payment or refunding of bonds — Terms of agreement with bondholder. — (1) The authority may issue its bonds from time to time in

principal amounts that it considers necessary to provide funds for any purpose under this chapter, including, without limitations, to purchase municipal bonds, to fund reserves or to pay costs of issuance, refunding, including redemption premium, credit enhancement, or other matters related to the purpose, structure or marketing of the bonds.

(2) Bonds shall be authorized by resolution of the authority and shall bear the date, mature at the time or times, bear interest at the rate or rates of fixed or variable interest, payable at the times, be in the denominations, be in the forms, carry the conversion or registration privileges, have the rank or priority, be executed in the manner, be payable from the sources in the medium of payment at the place or places inside or outside the state, and be subject to the terms of redemption, with or without premium, rights of holders to tender for purchase and other terms and conditions as the resolution of the authority provides.

(3) Bonds of the authority may be issued in one (1) or more series.

(4) Bonds of the authority may be sold at public or private sale at the price or prices the authority determines.

(5) The authority may, from time to time, issue its bonds under this chapter and pay and retire, or fund or refund previously issued bonds from proceeds of refunding bonds, or from other funds or money of the authority available for that purpose.

(6) By resolution, the authority may authorize entering into an indenture or trust agreement with a corporate trustee located within or outside the state in order:

(a) To provide for the issuance of the bonds with such terms, including without limitation those terms referred to in subsection (2) of this section, as the authority may determine;

(b) To pledge or assign to the trustee for the benefit of holders of the bonds all or any part of the proceeds of the bonds, any municipal bonds

purchased from municipalities or other sellers, any other assets or revenues of or received by or pledged to the authority, and the income or other proceeds from any or all of the foregoing;

(c) To provide for the establishment of reserves and any other funds or accounts that the authority determines to be necessary or appropriate, in addition to or in lieu of the reserve fund established pursuant to [section 67-8713, Idaho Code](#), which will secure all bonds issued by the authority unless the resolution of the authority providing for issuance of the bonds provides otherwise;

(d) To provide for the custody, safekeeping and enforcement of the municipal bonds acquired;

(e) To provide for the right to sell or otherwise dispose of property of any kind, including municipal bonds;

(f) To provide for the investment of bond proceeds or other moneys held by the trustee in such securities or obligations as may be described in the indenture or trust agreement;

(g) To provide for amending the indenture or trust agreement, with or without the consent of the holders of the bonds;

(h) To provide for the replacement of lost, stolen, destroyed or mutilated bonds;

(i) To provide for the issuance or limitations on issuance of additional bonds;

(j) To provide for the rights, liabilities, powers and duties arising upon the breach of any covenant, condition or obligation, to limit the rights of bondholders to enforce covenants, conditions or obligations, and to prescribe the events of default and the terms and conditions upon which any or all of the bonds become or may be declared due and payable before maturity, and the terms and conditions upon which the declaration and its consequences may be waived;

(k) To appoint and to provide for the duties and obligations of a paying agent or agents or other fiduciaries inside or outside the state;

(l) To make covenants to do or refrain from doing acts, including to enter into any contract, and to provide any other terms and conditions which

the authority may determine to be necessary or appropriate in order to better secure the bonds or improve their marketability; and

(m) To intercept certain payments, and to impose interest and penalties, as provided in [section 67-8725, Idaho Code](#).

History.

[I.C., § 67-8710](#), as added by 2001, ch. 130, § 1, p. 451; am. 2002, ch. 148, § 2, p. 426; am. 2005, ch. 389, § 3, p. 1250.

STATUTORY NOTES

Effective Dates.

Section 10 of S.L. 2005, ch. 389 declared an emergency. Approved April 14, 2005.

§ 67-8711. Purchase and disposition of bonds. — The authority may purchase bonds of the authority. The authority may hold, cancel or resell the bonds subject to, and in accordance with, agreements with holders of its bonds.

History.

I.C., § 67-8711, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8712. Presumption of validity. — After issuance, all bonds of the authority, and the purchase of all municipal bonds with the proceeds of the bonds, and any contracts entered into in connection with issuance of the bonds, shall be conclusively presumed to be fully authorized and issued under the laws of the state, and all persons, entities and municipalities are estopped from questioning the authorization, sale, issuance, execution or delivery of the bonds and other agreements by the authority.

History.

I.C., § 67-8712, as added by 2001, ch. 130, § 1, p. 451; am. 2005, ch. 389, § 4, p. 1250.

STATUTORY NOTES

Effective Dates.

Section 10 of S.L. 2005, ch. 389 declared an emergency. Approved April 14, 2005.

§ 67-8713. Reserve fund — Additional funds and accounts. — (1)

There is hereby created in the state treasury a fund to be known as the “Idaho Municipal Bond Bank Authority Reserve Fund” (hereinafter referred to as “reserve fund”) in which there shall be deposited or transferred:

(a) All proceeds of bonds or municipal bonds or any reserve surety policy or similar credit enhancement obtained to secure bonds of the authority that the authority may require, by contract with the municipality or by a resolution of the authority, to be deposited in the reserve fund; and

(b) All moneys appropriated by the legislature for the purpose of the fund.

(2) Moneys in the reserve fund shall be maintained by the authority and are pledged and shall be held and applied solely to the payment of the interest on and principal of those bonds designated by the authority, pursuant to the provisions of [section 67-8725, Idaho Code](#), as the interest and principal become due and payable. Moneys may not be withdrawn from the reserve fund if a withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, as herein defined, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable, whether by reason of maturity or mandatory redemption, for which payments other than moneys of the authority pledged to pay such interest and principal are not then available. As used in this chapter, “required debt service reserve” means, as of the date of computation, the amount required to be on deposit in the reserve fund as provided by resolution of the authority.

(3) For purposes of valuation, investments in the reserve fund shall be valued at par, or if purchased at less than par, at cost unless otherwise provided by resolution of the authority. Valuation on a particular date shall include the amount of interest then earned or accrued to that date on the moneys or investments in the reserve fund.

(4) Moneys in the reserve fund in excess of the required debt service reserve, whether by reason of investment or otherwise, may be withdrawn

at any time by the authority and transferred to another fund or account of the authority, subject to the provisions of any agreement with the holders of any bonds.

(5) In order to assure the maintenance of the required debt service reserve in the reserve fund, the legislature may annually appropriate to the authority for deposit in the reserve fund the sum, certified by the chairman of the authority to the legislature, that is necessary to restore the fund to an amount equal to the required debt service reserve. The chairman of the authority, annually before December 1, shall make and deliver to the legislature his certificate stating the sum required to restore the funds to that amount. Nothing in this subsection creates a debt or liability of the state to make any appropriation.

(6) All amounts received on account of moneys appropriated by the state to the reserve fund shall be held and applied in accordance with this section; provided however, at the end of each fiscal year, if the amount in the reserve fund derived from amounts appropriated by the legislature exceeds the required debt service reserve, any amount representing earnings or income received on account of moneys appropriated to the reserve fund by the legislature that exceed the expenses of the authority for that fiscal year shall be transferred to the general fund of the state.

(7) The authority may establish subaccounts in the reserve fund, additional reserves or other funds or accounts as may be, in its discretion, necessary or appropriate to further the accomplishment of its purposes or to comply with the provisions of any of its agreements or resolutions.

History.

I.C., § 67-8713, as added by 2001, ch. 130, § 1, p. 451; am. 2002, ch. 148, § 3, p. 426; am. 2005, ch. 389, § 5, p. 1250.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

Effective Dates.

Section 10 of S.L. 2005, ch. 389 declared an emergency. Approved April 14, 2005.

§ 67-8714. Personal liability. — Neither a member of the authority nor a person executing bonds issued or contracts entered into under this chapter shall be liable personally on the bonds or contracts.

History.

I.C., § 67-8714, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8715. Exemption from execution and sale. — All property of the authority is exempt from levy and sale by virtue of an execution. No execution or other judicial process may issue against the property of the authority, and a judgment against the authority may not be a charge or lien upon its property; provided however, this section shall not apply to nor limit the rights of a holder of bonds or a trustee on behalf of the holder to pursue a remedy for the enforcement of a pledge, lien or covenant given by the authority or a municipality.

History.

I.C., § 67-8715, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8716. Unlimited sales tax receipts pledge. — (1) The bond bank authority fund is hereby statutorily created in the state treasury. Moneys in the fund shall be used only as provided in this chapter. Earnings of the bond bank authority fund shall be deposited into the general fund as defined in section 67-1205, Idaho Code.

(2) If sufficient moneys are not available to pay debt service on the bonds of the authority, except for bonds the authority has specifically designated not to receive payment from the sales tax, as of five (5) days prior to the scheduled payment date of such bonds, the state treasurer shall give notice to the state controller, certifying the amount of the deficiency, at least five (5) days prior to the scheduled payment date. After receipt of the certified notice from the state treasurer pursuant to this subsection (2), the state controller shall cause moneys representing state sales tax receipts in the amount of the deficiency certified by the state treasurer to be transferred from the general fund as defined in [section 67-1205, Idaho Code](#), and deposited in the bond bank authority fund; provided however, that in no event shall a transfer of moneys representing state sales tax receipts from the general fund under the provisions of this chapter impede or otherwise affect the payment of sales tax moneys pledged for the payment on other state bonds outstanding on the effective date of this act or subsequently issued as tax anticipation notes pursuant to [section 63-3202, Idaho Code](#).

(3) Moneys transferred from the general fund to the bond bank authority fund pursuant to subsection (2) of this section shall be deposited in the reserve fund as replacement moneys for amounts withdrawn from the reserve fund to pay debt service on the bonds pursuant to [section 67-8725, Idaho Code](#), to the extent such moneys are derived from amounts appropriated to the reserve fund by the legislature, or shall be used to pay debt service when due on bonds for which other moneys available pursuant to [section 67-8727, Idaho Code](#), are insufficient.

(4) The state of Idaho pledges to and agrees with the holders of any bonds that the state will not alter, impair or limit the rights vested by the sales tax account pledge provided in this section and in [section 63-3638](#),

Idaho Code, with respect to the bonds until the bonds, together with applicable interest, are fully paid and discharged.

(5) To the extent that other legally available revenues and funds of the state are insufficient to meet the certified deficiency, the state tax commission shall transfer moneys from the sales tax account in **section 63-3638, Idaho Code**.

History.

I.C., § 67-8716, as added by 2001, ch. 130, § 1, p. 451; am. 2002, ch. 148, § 4, p. 426; am. 2005, ch. 389, § 6, p. 1250; am. 2008, ch. 407, § 1, p. 1116; am. 2011, ch. 214, § 1, p. 600.

STATUTORY NOTES

Cross References.

Sales tax account, § 63-3623.

State controller, § 67-1001 et seq.

State tax commission, § 63-101.

State treasurer, § 67-1201 et seq.

Amendments.

The 2008 amendment, by ch. 407, deleted subsection (1), which read: “If moneys expected to be intercepted pursuant to **section 67-8725, Idaho Code**, are expected to be insufficient to reimburse the state for its payments in respect of the municipal bonds, except for bonds the authority has specifically designated, at the time of issuance, not to receive payment from the sales tax, the state treasurer shall certify to and give notice to the state tax commission of the amount of the deficiency,” and redesignated former subsections (2) through (4) as present subsections (1) through (3); in the introductory paragraph in subsection (1), inserted “of the authority” in the first sentence and, in the last sentence, deleted “**section 67-8727, Idaho Code**” following “pursuant to”; and made an internal reference update in subsection (2).

The 2011 amendment, by ch. 214, substituted “receipts” for “account” in the section heading; added subsection (1) and redesignated the subsequent

subsections accordingly; rewrote present subsection (2) to the extent that a detailed comparison is impracticable; substituted “general fund” for “state sales tax account” and updated the internal reference in subsection (3); and in subsection (5), substituted “insufficient” for “sufficient,” inserted “state tax commission shall,” and deleted “is abated” from the end.

Compiler’s Notes.

The phrase “the effective date of this act” near the end of subsection (2) refers to the effective date of S.L. 2002, Chapter 148, which was effective July 1, 2002.

Effective Dates.

Section 10 of S.L. 2005, ch. 389 declared an emergency. Approved April 14, 2005.

§ 67-8717. Lien of pledge. — A pledge of sales tax revenues made by the authority is binding from the time the pledge is made. Sales tax revenues so pledged and thereafter received by the authority are immediately subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of a pledge is binding against all parties having claims against the authority of any kind in tort, contract, or otherwise, regardless of whether the parties have notice of the lien and notwithstanding any other law relating to the creation, priority, perfection or enforcement of pledges or liens or otherwise. Neither the resolution nor any other instrument by which a pledge is created must be filed or recorded except in the records of the authority.

History.

I.C., § 67-8717, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8718. Credit enhancement or liquidity. — (1) The authority may enter into agreements to obtain, from a department or agency of the United States or from a nongovernmental financial institution or other entity, insurance, guaranty or other credit enhancement or liquidity for the payment of interest or principal on, or payment of the purchase price on tender of:

(a) Bonds issued by the authority; (b) Municipal bonds purchased or held by the authority; and (c) Other municipal bonds as the authority determines to be appropriate.

(2) Agreements as provided in subsection (1) of this section may contain such payment, interest rate, security, default, remedies or other terms and conditions as the authority may determine to be necessary or appropriate.

History.

I.C., § 67-8718, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8719. Surety for deposits by bank. — All banks, trust companies, savings banks, investment companies and other persons carrying on a banking business are authorized to give to the authority a good and sufficient undertaking with such sureties as are approved by the bank, to the effect that the bank or banking institution shall faithfully keep and pay over to the order of, or upon the warrant of, the authority or its authorized agent all those funds deposited with it by the bank and agreed interest under, or by reason of, this chapter at such times or upon such demands as may be agreed with the bank or in lieu of these sureties, deposit with the authority or its authorized agent or a trustee or for the holders of bonds, as collateral, those securities as the authority may approve. The deposits of the authority may be evidenced by an agreement in the form, and upon the terms and conditions, that may be agreed upon by the authority and the depository bank or banking institution.

History.

I.C., § 67-8719, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8720. Expenses of administration. — All expenses incurred in carrying out this chapter are payable either from revenues or funds appropriated under this chapter or from moneys appropriated to the state treasurer from the general fund for operating expenditures. Nothing in this chapter authorizes the authority to incur an indebtedness or a liability on behalf of or payable by the state.

History.

I.C., § 67-8720, as added by 2001, ch. 130, § 1, p. 451; am. 2007, ch. 55, § 1, p. 138.

STATUTORY NOTES

Cross References.

General fund, § 67-1205.

State treasurer, § 67-1201 et seq.

Amendments.

The 2007 amendment, by ch. 55, in the first sentence, substituted “payable either” for “payable solely,” and added “or from moneys appropriated to the state treasurer from the general fund for operating expenditures.”

§ 67-8721. Swaps. — In connection with, or incidental to, the issuance or carrying of bonds, but only for the purpose of reducing the amount or duration of payment, interest rate, spread or similar risk, or to result in a lower cost of borrowing, and not for purposes of investment or speculation, the authority may enter into contracts which the authority determines to be necessary or appropriate to hedge such risk or to place the obligation of the bonds, in whole or in part, on the interest rate, cash flow, or other basis desired by the authority, including without limitation, contracts commonly known as interest rate swap agreements, interest rate caps or floors, forward payment conversion agreements, futures or hedge contracts.

History.

I.C., § 67-8721, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8722. Municipal bonds. — Any municipality which receives sales tax funds from the state may, in addition to any other powers it may have and without regard to the restrictions or requirements that might otherwise apply under the laws of the state but subject to the requirements of section 3, article VIII, of the constitution of the state of Idaho and any other limitations imposed upon municipalities by the constitution of the state of Idaho:

(1) Issue municipal bonds for sale to the authority, with such interest rate, maturity, redemption, security, remedies and other terms as the municipality may agree with the authority;

(2) Levy and collect property taxes, fees, rates, charges and other assessments to pay or secure the municipal bonds issued by the municipality for the sale to the authority;

(3) Pledge or assign to the authority or its designee property taxes, fees, rates, charges and other assessments, and rights to enforce the collection and application thereof, to pay or secure the municipal bonds issued by the municipality for sale to the authority; and

(4) Take any other actions and enter into such other contracts and agreements including, without limitation, leases on installment sale agreements for credit enhancement or liquidity, with such terms as it may determine with the authority to be necessary or appropriate to accomplish the purposes of the authority under this chapter.

History.

I.C., § 67-8722, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8723. Complete authority. — This chapter provides a complete, additional and alternative method for accomplishing the acts authorized by this chapter, whether by the authority or by municipalities, and the issuance of bonds and municipal bonds, the purchase of municipal bonds, the entering into of any indenture, trust agreement, credit enhancement or liquidity agreement, investment agreement, swap or other agreement entered into or the taking of any other action in connection with the issuance of bonds or municipal bonds need not comply with the requirements of any other law except as specifically set forth in this chapter.

History.

I.C., § 67-8723, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8724. Rights not to be impaired by state. — The state does hereby pledge to and agree with the holders of any bonds issued under this chapter that the state will not limit or alter the rights hereby vested in the authority to fulfill the terms of any agreements made with the holders thereof or in any way impair the security, rights or remedies of such holders until the bonds, with interest thereon, are fully paid and discharged. The authority is authorized to include this pledge and agreement in any indenture, trust agreement or other agreement with the holders of such bonds.

History.

I.C., § 67-8724, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8725. Payment transfer — Notice of nonpayment — State financial assistance intercept mechanism — State treasurer duties — Interest and penalty provisions. — (1)(a) Each municipality, with outstanding unpaid municipal bonds as set forth in this chapter held by or for the authority, shall transfer moneys sufficient for the scheduled debt service payment to its paying agent at least fifteen (15) days before any principal or interest payment date for the bonds in order that the bonds of the authority may be paid. The paying agent may be the trustee for the bonds of the authority that are secured by those municipal bonds.

(b) A municipality subject to this section and chapter with regard to any municipal bonds and which is unable to transfer the scheduled debt service payment to the paying agent at least fifteen (15) days before the scheduled payment date shall immediately notify the paying agent and the state treasurer by:

- (i) Telephone;
- (ii) A writing sent by facsimile transmission; and
- (iii) A writing sent by first-class United States mail.

(c) If sufficient funds are not transferred to the paying agent as required by this subsection, the paying agent shall notify the authority and the state treasurer of that failure in writing at least ten (10) days before the scheduled debt service payment date by:

- (i) Telephone;
- (ii) A writing sent by facsimile transmission; and
- (iii) A writing sent by first-class United States mail.

(d) If sufficient moneys to pay the scheduled debt service payment have not been transferred to the paying agent at least ten (10) days before the scheduled payment date, the authority or the state treasurer shall cause sufficient moneys to be transferred from the reserve fund as provided in [section 67-8713, Idaho Code](#), to the paying agent to make the scheduled debt service payment on the bonds of the authority.

(e) To the extent moneys transferred from the reserve fund are derived from moneys appropriated to the reserve fund by the legislature, the payment by the state treasurer transfers the rights represented by the obligation of the municipality and/or authority from the bondholders to the state.

(2)(a) If one (1) or more payments on bonds are made by the state treasurer from moneys in the reserve fund that are derived from moneys appropriated to the reserve fund by the legislature, due to the failure of the municipality to make payment on its bonds in a timely manner, the state treasurer, subject to the limitations provided in paragraph (b) of this subsection shall:

(i) Immediately intercept any payments from:

(A) The receipts of any payment of property taxes; or

(B) Sales tax moneys that would be distributed pursuant to [section 63-3638, Idaho Code](#); or

(C) Liquor revenues that would be distributed pursuant to [section 23-404, Idaho Code](#); or

(D) Any other source of operating moneys provided by the state to the municipality that issued the municipal bonds that would otherwise be paid to the municipality by the state; and

(ii) Apply the intercepted payments to reimburse the state for payments made by the state for the bonds of the authority by deposit to the reserve fund up to the amount withdrawn from the reserve fund for such purpose until all obligations of the municipality to the state arising from those payments, including interest and penalties, are paid in full.

(b) The foregoing intercept and transfer provisions shall operate by force of law and no consent thereto is required of the municipality in order to be enforceable, provided that such provisions shall not apply to any municipal bonds that were previously deemed exempt from intercept under [section 67-8728, Idaho Code](#), when such section was in full force and effect.

(c) The state has no obligation to the municipality or to any person or entity to replace any moneys intercepted under the authority of this subsection. Any funds intercepted under subsection (2)(a)(i) of this section shall be used only for payment of bonds of the authority and not the bonds of the municipality, and the municipality shall receive no credit against amounts due under its municipal bonds for any amounts intercepted under subsection (2)(a)(i) of this section.

(3) The municipality that issued municipal bonds for which the state has made all or part of a debt service payment, either from amounts in the reserve fund that are derived from moneys appropriated by the legislature or from moneys transferred from the state sales tax account pursuant to [section 67-8716, Idaho Code](#), shall:

(a) Reimburse all moneys drawn by the state treasurer on its behalf;

(b) Pay interest to the state on all moneys paid by the state from the date the moneys are drawn to the date they are repaid at a rate not less than the average prime rate for national money center banks plus five percent (5%); and

(c) Pay all penalties required by this chapter.

(4)(a) The state treasurer shall establish the reimbursement interest rate after considering the circumstances of any prior draws by the municipality on the state, market interest and penalty rates, and the cost of funds, if any, that were required to be borrowed by the state to make payments on the bonds.

(b) The state treasurer may, after considering the circumstances giving rise to the failure of the municipality to make payment on its bonds in a timely manner, impose on the municipality a penalty of not more than five percent (5%) of the amount paid by the state for each instance in which a payment by the state is made.

(5)(a)(i) If the state treasurer determines that amounts obtained under this section will not reimburse the state in full within one (1) year from the state's payment of a municipality's scheduled debt service payment, the state treasurer shall pursue any legal action, including mandamus, against the municipality to compel it to:

(A) Levy and provide tax or other revenues to pay debt service on its municipal bonds when due; and

(B) Meet its repayment obligations to the state.

(ii) In pursuing its rights under paragraph (a) of this subsection, the state shall have the same substantive and procedural rights as would a holder of the bonds of a municipality.

(b) The attorney general shall assist the state treasurer in these duties.

(c) The municipality shall pay the attorney's fees, expenses and costs of the state treasurer and the attorney general.

(6)(a) Except as provided in paragraph (c) of this subsection, any municipality whose operating funds were intercepted under this section may replace those funds from other municipal moneys or from property taxes, subject to the limitations provided in this subsection. Said operating funds may also be replaced by the authority from excess amounts available to it if the municipality subsequently pays the delinquent payments on its municipal bonds and any penalties or costs of expenses due the authority in connection therewith.

(b) A municipality may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

(i) Taxes originally levied to make the payment but which were not timely received by the municipality;

(ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;

(iii) Moneys transferred from the undistributed reserve, if any, of the municipality; or

(iv) Any other source of money on hand and legally available.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection, a municipality may not replace operating funds intercepted by the state with moneys collected by the municipality and held to make payments on its municipal bonds if that replacement would divert moneys from the payment of future debt service on its municipal bonds

and increase the risk that the state would be called upon an additional time to make payments on the bonds of the authority.

History.

I.C., § 67-8725, as added by 2001, ch. 130, § 1, p. 451; am. 2002, ch. 148, § 5, p. 426; am. 2005, ch. 389, § 7, p. 1250; am. 2008, ch. 407, § 2, p. 1117.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Sales tax account, § 63-3623.

State treasurer, § 67-1201 et seq.

Amendments.

The 2008 amendment, by ch. 407, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Section 67-8728, referred to in paragraph (2)(b), was repealed by S.L. 2008, ch. 407, § 4, effective July 1, 2008.

Effective Dates.

Section 10 of S.L. 2005, ch. 389 declared an emergency. Approved April 14, 2005.

§ 67-8726. Cooperation by government agencies. — (1) All officers, departments, boards, agencies, divisions and commissions of the state shall render to the authority services that are within the area of their respective governmental functions and that may be requested by the authority, and shall comply promptly with any reasonable request by the authority to conduct a study or review regarding:

(a) The desirability, need, expense or financial feasibility of a public project, purpose or improvement; or

(b) The financial or fiscal responsibility or ability of a municipality making application to the authority for the purchase by the authority of municipal bonds to be issued by that municipality.

(2) The cost and expense of a service requested by the authority, at the request of the officer, department, board, agency, division or commission rendering the service, shall be paid by the authority.

History.

I.C., § 67-8726, as added by 2001, ch. 130, § 1, p. 451.

§ 67-8727. Alternative intercept procedure. — Notwithstanding any other provision of law to the contrary, to the extent that any bonds are not secured by moneys appropriated by the legislature to the reserve fund established pursuant to section 67-8713, Idaho Code, or such moneys are insufficient to pay debt service when due on the bonds, in lieu of the provisions set forth in section 67-8725, Idaho Code, the following provisions shall apply, provided that the provisions of section 67-8725, Idaho Code, shall continue to apply with respect to transfers of amounts in the reserve fund derived from moneys appropriated by the legislature:

(1)(a) Each municipality with outstanding unpaid municipal bonds as set forth in this chapter held by or for the authority, shall transfer moneys sufficient for the scheduled debt service payment to its paying agent at least fifteen (15) days before any principal or interest payment date for the bonds. The paying agent may be the trustee for the bonds of the authority that are secured by those municipal bonds.

(b) A municipality which is unable to transfer the scheduled debt service payment to the paying agent at least fifteen (15) days before the scheduled payment date shall immediately notify the paying agent, the authority and the state treasurer by:

- (i) Telephone;
- (ii) A writing sent by facsimile transmission; and
- (iii) A writing sent by first-class United States mail.

(c) If sufficient funds are not transferred to the paying agent as trustee for the bonds of the authority that are secured by those municipal bonds at least ten (10) days before the scheduled debt service payment date of those bonds, the trustee shall transfer any available funds pledged to secure payment of the bonds of the authority or the municipality held in any reserve fund or other pledged fund, or draw on any reserve surety policy securing such bonds, sufficient amounts to make up any shortfall in the amount necessary to pay debt service on the bonds on the scheduled payment date and deposit such amount in the debt service payment fund for those bonds.

(d) If the trustee is required to transfer funds pursuant to paragraph (c) of this subsection to pay debt service on the bonds of the authority or there are not sufficient funds available pursuant to paragraph (c) of this subsection to make up for any shortfall in the amount necessary to pay debt service on such bonds in order that the bonds of the authority may be timely paid, at least ten (10) days before the scheduled debt service payment date of the bonds, the trustee shall notify the authority and the state treasurer by:

- (i) Telephone;
- (ii) A writing sent by facsimile transmission; and
- (iii) A writing sent by first-class United States mail.

(e) Upon the notice provided in subsection (1)(d) of this section, the state treasurer shall:

(i) Immediately intercept any payments from:

- (A) The receipts of any payment of property taxes; or
- (B) Sales tax moneys that would be distributed pursuant to [section 63-3638, Idaho Code](#); or
- (C) Liquor tax moneys that would be distributed pursuant to [section 23-404, Idaho Code](#); or
- (D) Any other source of operating moneys provided by the state to the municipality that issued the municipal bonds that would otherwise be paid to the municipality by the state; and

(ii) Transfer the intercepted payments in the following order of priority:

- (A) To the trustee for the bonds of the authority for deposit in the debt service payment fund for such bonds until there are sufficient amounts on deposit to pay debt service on the bonds of the authority on the scheduled payment date; provided that if the state treasurer will be unable to transfer sufficient intercepted payments for such purpose, the state treasurer shall give notice to the state tax commission, certifying the amount of the deficiency, at least five (5) days prior to the scheduled payment date of the bonds;

(B) To the trustee for the bonds to reimburse any amounts transferred from a reserve or other pledged fund or surety policy pursuant to paragraph (c) of this subsection up to the required balance in such fund or required reimbursement of such surety; and

(C) To the state for the reimbursement of any moneys transferred from the state sales tax account pursuant to [section 67-8716, Idaho Code](#), to pay debt service on the bonds on the scheduled payment date, together with any interest or penalties established pursuant to [section 67-8725, Idaho Code](#);

(iii) The foregoing intercept and transfer provisions shall operate by force of law and no consent thereto is required of the municipality in order to be enforceable, provided that such provisions shall not apply to any municipal bonds which were previously deemed exempt from intercept under [section 67-8728, Idaho Code](#), when such section was in full force and effect.

(f) The state has no obligation to the municipality or to any person or entity to replace any moneys intercepted under the authority of this subsection. Any funds intercepted under subsection (1)(e) of this section shall be used only for payment of bonds of the authority and not for the bonds of the municipality, and the municipality shall receive no credit against amounts due under its municipal bonds for any amounts intercepted under subsection (1)(e) of this section.

(2)(a) The municipal bonds or the agreement for purchase of the municipal bonds by the authority may provide for payment of interest and penalties and other terms for reimbursement of any amounts drawn from reserve funds, pledged funds, reserve surety policies or other credit enhancement to pay debt service on the bonds of the authority due to the failure of the municipality to make payment on its municipal bonds in a timely manner. To the extent that debt service on the bonds of the authority is paid from the state sales tax account pursuant to [section 67-8716, Idaho Code](#), the provisions of sections 67-8725(3), (4) and (5), Idaho Code, shall apply.

(b) If the authority determines that amounts obtained under this section will not fully make up for failure of the municipality to pay its municipal bonds when due, together with any interest and penalties established

pursuant to this section, within one (1) year from the payment of the municipality's scheduled debt service payment, the authority or the trustee for the bonds of the authority may pursue any legal action, including mandamus, against the municipality to compel the municipality to:

- (i) Levy and provide tax or other revenues to pay debt service on its municipal bonds when due; and
 - (ii) Meet its repayment obligations, under its municipal bonds or otherwise, to the authority.
- (c) In pursuing their rights under this subsection, the authority and the trustee shall also have the same substantive and procedural rights as a holder of the bonds of a municipality.
- (d) The attorney general shall assist the authority in carrying out its duties under this subsection.
- (e) The municipality shall pay the attorney's fees, expenses and costs of the authority, the trustee and the attorney general.

(3)(a) Except as provided in paragraph (c) of this subsection, any municipality whose operating funds were intercepted under this section may replace those funds from other municipal moneys or from property taxes, subject to the limitations provided in this subsection. Said operating funds may also be replaced by the authority from excess amounts available to it if the municipality subsequently pays the delinquent payments on its municipal bonds and any penalties or costs of expenses due the authority in connection therewith.

(b) A municipality may use property taxes or other moneys to replace intercepted funds only if the property taxes or other moneys were derived from:

- (i) Taxes originally levied to make the payment but which were not timely received by the municipality;
- (ii) Taxes from a supplemental levy made to make the missed payment or to replace the intercepted moneys;
- (iii) Moneys transferred from the undistributed reserve, if any, of the municipality; or

- (iv) Any other source of money on hand and legally available.
- (c) Notwithstanding the provisions of subsections (3)(a) and (b) of this section, a municipality may not replace operating funds intercepted by the state with moneys collected by the municipality and held to make payments on its municipal bonds if that replacement would divert moneys from the payment of future debt service on its municipal bonds and increase the risk that the state would be called upon an additional time to make payments on the bonds of the authority.

History.

I.C., § 67-8727, as added by 2002, ch. 148, § 6, p. 426; am. 2005, ch. 389, § 8, p. 1250; am. 2008, ch. 407, § 3, p. 1120.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Sales tax account, § 63-3623.

State tax commission, § 63-101.

State treasurer, § 67-1201 et seq.

Amendments.

The 2008 amendment, by ch. 407, rewrote the section to the extent that a detailed comparison is impracticable.

Compiler's Notes.

Section 67-8728, referred to in paragraph (1)(e)(iii), was repealed by S.L. 2008, ch. 407, § 4, effective July 1, 2008.

Effective Dates.

Section 10 of S.L. 2005, ch. 389 declared an emergency. Approved April 14, 2005.

§ 67-8728. Limited exemption from intercept provisions. [Repealed.]

STATUTORY NOTES

Compiler's Notes.

This section, which comprised I.C., § 67-8728, as added by 2005, ch. 389, § 9, p. 1250, was repealed by S.L. 2008, ch. 407, § 4.

§ 67-8729. Idaho bond bank administrative fund. — (1) There is hereby created in the state treasury the “Idaho Bond Bank Administrative Fund” to which shall be credited:

(a) Fees collected from municipalities or other potential sellers of municipal bonds in connection with application for and receipt of financing under this chapter, and interest and other charges on or in connection with municipal bonds purchased as it may deem necessary or appropriate to cover all costs and expenses of the authority and its operations; (b) Fees and charges collected to cover costs associated with the powers and duties of the authority as required in [section 67-8705, Idaho Code](#); (c) Interest earned on the investment of idle moneys in the fund, which shall be paid to the fund; and (d) All other moneys as may be provided by law.

(2) Moneys in the fund shall be continuously appropriated to the authority, and any moneys remaining in the fund at the end of each fiscal year shall not be appropriated to any other fund.

(3) Moneys in the fund shall only be used to effect the purposes of chapter 87, title 67, Idaho Code, pursuant to the provisions as prescribed therein; provided however, the authority may approve reimbursement of the state treasurer’s costs associated with the implementation, administration and oversight of the Idaho bond bank authority.

History.

[I.C., § 67-8729](#), as added by 2007, ch. 342, § 1, p. 1013; am. 2016, ch. 160, § 1, p. 443.

STATUTORY NOTES

Cross References.

Idaho bond bank authority, § 67-8703.

State treasurer, § 67-1201 et seq.

Amendments.

The 2016 amendment, by ch. 160, substituted “authority” for “treasurer of the state of Idaho” in subsection (2); and substituted “authority may approve reimbursement of the state treasurer’s costs” for “Idaho bond bank administrative fund is authorized to retain a portion of the moneys not to exceed one-half of one percent (0.5%) of the fund’s annual revenues to defray costs” in subsection (3).

Chapter 88
IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS
MEDAL OF HONOR

Sec.

67-8801. Idaho law enforcement, firefighting and EMS medal of honor established.

67-8802. Idaho law enforcement, firefighting and EMS medal of honor commission created — Membership — Establishment of qualifications for award.

67-8803. When and by whom awarded.

67-8804. Posthumous award.

67-8805. Design and cost.

67-8806. Definitions.

67-8807. Nominations.

67-8808. Qualifications.

§ 67-8801. Idaho law enforcement, firefighting and EMS medal of honor established. — There is hereby established a decoration of the Idaho law enforcement, firefighting and EMS medal of honor, referred to in this chapter as the “Idaho medal of honor,” with accompanying ribbons and appurtenances for award by the governor in the name of the state to any law enforcement officer, firefighter or EMS provider who has been killed or seriously injured in the performance of duty, or who has been distinguished by exceptionally meritorious conduct, upon nomination of the Idaho law enforcement, firefighting and EMS medal of honor commission.

History.

I.C., § 67-8801, as added by 2004, ch. 367, § 1, p. 1089; am. 2005, ch. 163, § 2, p. 498; am. 2020, ch. 152, § 1, p. 454.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 152, inserted “referred to in this chapter as the ‘Idaho medal of honor’” near the beginning of the section.

§ 67-8802. Idaho law enforcement, firefighting and EMS medal of honor commission created — Membership — Establishment of qualifications for award. — (1) There is hereby created in the office of the

governor the Idaho law enforcement, firefighting and EMS medal of honor commission, hereafter referred to as the commission, which shall nominate candidates for the award of the Idaho medal of honor. The commission shall consist of one (1) representative from each of the following: the office of the governor, the office of the attorney general, the Idaho prosecuting attorneys association, the Idaho chiefs of police association, the Idaho fire chiefs association, the Idaho sheriffs' association, the Idaho peace officers association, the Idaho department of health and welfare bureau of emergency medical services, the peace officers standards and training council, and the professional firefighters of Idaho. Members of the commission shall be appointed by the governor and shall each serve for a term of four (4) years. Members of the commission shall hold office until the latter of expiration of the term to which the member was appointed or his successor has been duly appointed and qualified.

(2) The attorney general or his designee shall serve as chair of the commission and shall designate a secretary for the commission.

(3) The commission shall meet annually, or at the call of the chair, to consider candidates for nomination. Commission meetings may be conducted via teleconference.

(4) The commission may adopt such rules as it deems necessary to carry out the purposes of this chapter.

History.

I.C., § 67-8802, as added by 2004, ch. 367, § 1, p. 1089; am. 2005, ch. 163, § 3, p. 498; am. 2020, ch. 152, § 2, p. 454.

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Peace officer standards and training council, § 19-5101 et seq.

Amendments.

The 2020 amendment, by ch. 152, in subsection (1), deleted “law enforcement, firefighting and EMS” preceding “medal of honor” at the end of the first sentence, added “and the professional firefighters of Idaho” at the end of the second sentence, and added the last sentence; and rewrote subsection (4), which formerly read: “The commission shall adopt rules establishing the qualifications for the Idaho law enforcement, firefighting and EMS medal of honor and the protocol governing the decoration, and other rules necessary to carry out the purposes of this chapter.”

Compiler’s Notes.

For more on the Idaho prosecuting attorneys association, see <http://www.ipaa-prosecutors.org>.

For more on the Idaho chiefs of police association, see <https://icopa.org>.

For more on the Idaho fire chiefs association, see <http://idahofirechiefs.org>.

For more on the Idaho sheriffs association, see <https://www.idahosheriffs.org>.

For more on the Idaho peace officers association, see <https://www.idahopeaceofficersassn.org>.

For more on Idaho emergency medical services, see <https://healthandwelfare.idaho.gov/Medical/EmergencyMedicalServices/tabid/117/Default.aspx>.

For more on the professional firefighters of Idaho, see <https://www.facebook.com/ProFFIdaho>.

§ 67-8803. When and by whom awarded. — The Idaho medal of honor shall be awarded by the governor in a ceremony during the time that the legislature is in session or at such other time as the commission may decide. The governor may delegate the awarding of the medal to the lieutenant governor, the attorney general, or another member of the commission.

History.

I.C., § 67-8803, as added by 2004, ch. 367, § 1, p. 1089; am. 2005, ch. 163, § 4, p. 498; am. 2012, ch. 213, § 1, p. 580; am. 2020, ch. 152, § 3, p. 454.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 213, inserted “law enforcement” and added “and to the firefighter and EMS recipients during the annual Idaho fallen firefighter memorial ceremony” in the first sentence.

The 2020 amendment, by ch. 152, rewrote the text of the section, which formerly read: “The Idaho law enforcement, firefighting and EMS medal of honor shall be awarded by the governor to the law enforcement recipients during the national law enforcement recognition week and to the firefighter and EMS recipients during the annual Idaho fallen firefighter memorial ceremony. The governor may delegate the awarding of the medal to the lieutenant governor or the attorney general.”

§ 67-8804. Posthumous award. — The Idaho medal of honor may be awarded posthumously by presentation to a representative of the deceased as may be deemed appropriate by the governor or the designees specified in section 67-8803, Idaho Code.

History.

I.C., § 67-8804, as added by 2004, ch. 367, § 1, p. 1089; am. 2005, ch. 163, § 5, p. 498; am. 2020, ch. 152, § 4, p. 454.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 152, deleted “law enforcement, firefighting and EMS” preceding “medal of honor” near the beginning of the section.

§ 67-8805. Design and cost. — The decoration of the Idaho medal of honor shall be cast in bronze or other metal. The design of the medal shall incorporate the great seal of the state of Idaho with other insignia as deemed appropriate by the commission. The reverse of the decoration shall be inscribed with the words: “For honorable and meritorious conduct.” The cost of the medal shall be paid by the agency whose officer, firefighter or EMS provider receives the medal. The family of a recipient may request a second medal and may receive such medal upon payment to the commission of the cost of the medal.

History.

I.C., § 67-8805, as added by 2004, ch. 367, § 1, p. 1089; am. 2005, ch. 163, § 6, p. 498; am. 2020, ch. 152, § 5, p. 454.

STATUTORY NOTES

Cross References.

Great seal, Idaho **Const., Art. IV, § 15** and **§ 59-1005**.

Amendments.

The 2020 amendment, by ch. 152, deleted “law enforcement, firefighting and EMS” preceding “medal of honor” near the beginning of the first sentence; deleted “law enforcement, firefighting and EMS medal of honor” preceding “commission” at the end of the second sentence; and rewrote the third sentence, which formerly read: “The reverse of the decoration shall be inscribed with the words: ‘For exceptionally honorable and meritorious conduct in performing services as a law enforcement officer, firefighter or EMS provider.’”

§ 67-8806. Definitions. — As used in this chapter:

(1) “EMS” means emergency medical services.

(2) “Emergency medical services provider” or “EMS provider” means an emergency medical technician, advanced emergency medical technician, or paramedic licensed by the department of health and welfare pursuant to [sections 56-1011 through 56-1018B, Idaho Code](#), and an ambulance-based clinician as defined in the rules governing emergency medical services as adopted by the department of health and welfare.

(3) “Exceptional meritorious conduct” means an act of bravery and self-sacrifice, at the risk of serious injury or loss of one’s own life, which is so conspicuous as to clearly distinguish the individual above his comrades.

(4) “Firefighter” means a volunteer member or paid employee whose primary duty is preventing, extinguishing, or investigating fires and who prevents, extinguishes, or investigates fires as part of a fire district, fire department, or agency that is a part of or administered by the state or any political subdivision thereof.

(5) “Law enforcement officer” means a volunteer member or a paid employee of a police or law enforcement agency that is a part of or administered by the state, a federally recognized Indian tribe, or any political subdivision of the state whose primary duties are the prevention and detection of crime and the enforcement of the laws of this state or any of its political subdivisions.

(6) “Serious injury” means any injury that causes great bodily harm and a probability of death, any injury that causes significant permanent disfigurement, or any injury that causes a significant permanent loss or impairment of the function of any body part or organ.

History.

[I.C., § 67-8806](#), as added by 2005, ch. 163, § 7, p. 498; am. 2020, ch. 152, § 6, p. 454.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 152, deleted “and” from the end of subsection (1); substituted “medical technician, advanced emergency medical technician, or paramedic licensed” for “medical services provider certified” near the beginning of subsection (2) and added subsections (3) to (6).

§ 67-8807. Nominations. — (1) All nominations shall be:

(a) In writing; (b) Submitted on the form provided by the commission; and (c) Postmarked and mailed, or hand-delivered, to the commission chairman at the address appearing on the nomination form on or before the date set forth on the form.

(2) All documentation, photographs, testimonials, affidavits, or other supplemental or additional information pertaining to the nomination must accompany the completed form.

(3) Nomination forms must be endorsed by the chief law enforcement officer of the department of the nominee, the fire chief, or the head of the nominee's EMS agency, as applicable.

History.

I.C., § 67-8807, as added by 2020, ch. 152, § 7, p. 454.

§ 67-8808. Qualifications. — All nominees shall:

(1) Be, or at the time of the incident must have been, a law enforcement officer, firefighter, or EMS provider performing or fulfilling responsibilities in an official capacity as a law enforcement officer, firefighter, or EMS provider; and

(2) Have performed with exceptional meritorious conduct, including conduct that resulted in death or serious injury.

History.

I.C., § 67-8808, as added by 2020, ch. 152, § 8, p. 454.

Chapter 89

IDAHO ENERGY RESOURCES AUTHORITY ACT

Sec.

67-8901. Short title.

67-8902. Declaration of necessity and purpose.

67-8903. Definitions.

67-8904. Creation of Idaho energy resources authority.

67-8905. Directors — Terms of office — Appointment — Filling vacancies and removal.

67-8906. Quorum — Mode of action — Compensation.

67-8907. Organizational meeting — Chairman — Secretary and treasurer — Executive director — Delegation of power — Surety bond and conflict of interest.

67-8908. Powers.

67-8909. Development, acquisition and construction of facilities.

67-8910. Management and operation of facilities.

67-8911. Sale of electricity, product or service from facilities — Charges.

67-8912. Cost recovery and rate stabilization charges of participating utilities.

67-8913. Cooperation with other agencies and subdivisions.

67-8914. Exemption from income taxation.

67-8915. Issuance of bonds to finance facilities.

67-8916. Refunding bonds.

67-8917. Payment of bonds — Nonliability of state.

67-8918. State's pledge.

67-8919. Fees.

67-8920. Exemption of real property of authority from levy and sale by execution.

67-8921. Annual report.

67-8922. Authority obligations are legal investments.

67-8923. Chapter not a limitation of powers.

67-8924. Constitutionality.

67-8925. Renewable energy generation projects.

67-8926. Conservation measures.

§ 67-8901. Short title. — This act may be referred to and cited as the “Idaho Energy Resources Authority Act.”

History.

I.C., § 67-8901, as added by 2005, ch. 53, § 1, p. 192.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 2005, Chapter 53, which is codified as §§ 67-8901 to 67-8924.

§ 67-8902. Declaration of necessity and purpose. — (1) It is hereby determined and declared that:

- (a) Industrial, irrigation, commercial and residential consumers in the state of Idaho receive electric service from various investor-owned, cooperative and municipal utilities and the ability of these utilities to provide reliable and economic electric services at stable prices is essential to the economy and the economic development of the state of Idaho and to the health, safety and welfare of its people;
- (b) The regional interconnection of electric utilities causes events and conditions in other western states to have a significant impact of the operations of utilities in the state of Idaho and the restructuring of the electric industry in recent years by the federal government and in other states has exposed all utilities in Idaho, and the consumers served by them, to volatile market prices, reliability concerns and other adverse conditions;
- (c) It is in the best interest of the state of Idaho and its people that sufficient and reliable electric generation and transmission resources are developed and made available at cost-based rates in order to enable these utilities to meet existing and future demands for electric services, to provide adequate reserves and to promote reliability at the most stable rates practicable;
- (d) The electric utility and energy industries are and will continue to be capital-intensive industries and the availability of cost-effective financing to investor-owned, cooperative and municipal utilities will enhance the ability of these utilities to provide and promote economic electric services to consumers in the state;
- (e) Coordination, cooperation and joint ventures between and among such utilities with one another and with the private, cooperative, federal, state and municipal utilities and agencies that provide wholesale and retail electric services in the western states will promote regional electric reliability and stability and will provide economies of scale;

(f) It is the intent of the legislature to create the Idaho energy resources authority to promote the development and financing of facilities for the benefit of participating utilities and to accomplish the purposes stated above, and to authorize the authority to exercise all such powers as are necessary to enable it to achieve such purposes and to thereby promote and protect the economy of the state of Idaho and the health, safety and welfare of its people; and

(g) It is in the best interest of the state of Idaho and its people to encourage and promote the development of renewable energy resources in order to develop sustainable sources of energy supply, reduce inefficiencies in the use of electric energy and enhance the long-term stability of the energy resources and requirements of the state.

(2) Nothing contained herein is intended or shall be construed to limit or restrict the authority of the Idaho public utilities commission with respect to the regulation of electric corporations and public utilities pursuant to title 61, Idaho Code.

History.

[I.C., § 67-8902](#), as added by 2005, ch. 53, § 1, p. 192; am. 2005, ch. 311, § 1, p. 964.

STATUTORY NOTES

Cross References.

Public utilities commission, § 61-201 et seq.

Compiler's Notes.

Section 1 of S.L. 2005, ch. 311 amended this section as it read following its enactment by S.L. 2005, ch. 53 (House Bill 106), § 1.

§ 67-8903. Definitions. — When used in this chapter, the following terms shall have the following meanings:

(1) “Authority” means the Idaho energy resources authority created pursuant to [section 67-8904, Idaho Code](#).

(2) “Board” means the board of directors of the authority.

(3) “Bonds” means any bonds, notes, certificates or other obligations or evidences of indebtedness issued by the authority.

(4) “Commission” means the Idaho public utilities commission created pursuant to [section 61-201, Idaho Code](#).

(5) “Electric cooperative” means a cooperative corporation or association that is:

(a) Organized under the provisions of [section 501\(c\)\(12\) or 1381 of the Internal Revenue Code](#);

(b) An Idaho nonprofit corporation pursuant to chapter 30, title 30, Idaho Code; and

(c) An operating entity or successor entity thereof that owns facilities and provides electric service to customers in Idaho as of the effective date of this chapter.

(6) “Facility” means any facility necessary, used or useful in connection with the generation, transmission or distribution of electric power and energy and any renewable energy generation project, in each case including, but not limited to, all real and personal property, fuel supplies and transportation facilities, pollution control facilities, and all equipment and improvements necessary or desirable in connection with a facility. “Facility” shall include facilities owned in whole or in part by the authority or a participating utility, including undivided ownership interests in facilities, leasehold interests in facilities and other estates, but excludes a generating facility that sells any portion of its output as a qualifying facility to a participating utility under provisions of the public utility regulatory policies act of 1978, [16 U.S.C. section 2601 et seq.](#)

(7) “Independent power producer” means any public or private corporation that is not itself a participating utility, but which may be an affiliate of a participating utility, that develops any renewable energy generation project undertaken by the authority pursuant to this chapter.

(8) “Participating utility” means, with respect to any facilities undertaken by the authority pursuant to this chapter, any public or private corporation, electric cooperative or other cooperative corporation or association, municipal corporation, political subdivision of this state or another state, state or federal agency, joint operating entity or other entity that:

(a) Owns and operates an electric utility system that provides electric services to consumers of electricity located in an existing service area within the boundaries of this state;

(b) Provides electric generation, power supply, transmission and/or ancillary and related services at wholesale to one (1) or more participating utilities described in paragraph (a) of this subsection; or

(c) Is organized or operates as a regional transmission organization covering all or any part of the state of Idaho and one (1) or more other states.

(9) “Renewable energy” means a source of energy that occurs naturally, is regenerated naturally or uses as a fuel source, a waste product or byproduct from a manufacturing process including, but not limited to, open or closed-loop biomass, fuel cells, geothermal energy, waste heat, cogeneration, solar energy, waterpower and wind.

(10) “Renewable energy generation project” means an electric generating facility or system that uses renewable energy as its primary source of energy to generate electricity.

(11) “Revenues” means all receipts, purchase payments, loan repayments, lease payments, rents, fees and charges, and all other income or receipts derived by the authority from a participating utility.

History.

I.C., § 67-8903, as added by 2005, ch. 53, § 1, p. 192; am. 2005, ch. 311, § 2, p. 964; am. 2007, ch. 107, § 1, p. 310; am. 2017, ch. 58, § 36, p. 91.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 107, inserted “or distribution” in the first sentence in subsection (6).

The 2017 amendment, by ch. 58, substituted “chapter 30, title 30” for “chapter 3, title 30” in paragraph (5)(b).

Federal References.

Sections 501 (c)(12) and 1381 of the Internal Revenue Code, referred to in paragraph (5)(a), are codified as 26 U.S.C.S. §§ 501(c)(12) and 1381, respectively.

Compiler’s Notes.

Section 2 of S.L. 2005, ch. 311 amended this section as it read following its enactment by S.L. 2005, ch. 53 (House Bill 106), § 1.

The phrase “effective date of this chapter” at the end of paragraph (5)(c), originated with S.L. 2005, Chapter 53 and means July 1, 2005, the effective date of that act.

Effective Dates.

Section 5 of S.L. 2007, ch. 107 declared an emergency. Approved March 20, 2007.

§ 67-8904. Creation of Idaho energy resources authority. — There is hereby created and established an independent public body politic and corporate to be known as the “Idaho Energy Resources Authority.” The authority is a public instrumentality of the state and its exercise of the powers conferred by this chapter is and shall be deemed to be the performance of essential public functions and purposes.

History.

I.C., § 67-8904, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8905. Directors — Terms of office — Appointment — Filling vacancies and removal. — (1) The powers of the authority shall be vested in a board of seven (7) directors to be appointed by the governor and confirmed by the senate.

(2) In making appointments, the governor shall endeavor to appoint individuals with direct professional experience and demonstrated knowledge in the electric utility industry. In addition to representatives of investor-owned, electric cooperative or municipal utilities, the governor may also appoint individuals with expertise in fields related to the functions of the authority such as engineering, banking, finance, economics and law.

(3) The directors of the authority first appointed by the governor shall serve for terms to be designated by the governor expiring on June 30, as follows: two (2) in 2006, one (1) in 2007, two (2) in 2008 and one (1) in each of 2009 and 2010. After the expiration of these initial terms, directors shall serve for five (5) year terms. Each director shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any director shall be eligible for reappointment but no director may serve more than two (2) consecutive terms.

(4) The governor shall fill any vacancy for the remainder of any unexpired term.

(5) Any director may be removed by the governor for malfeasance or willful neglect of duty or other cause.

History.

I.C., § 67-8905, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8906. Quorum — Mode of action — Compensation. — (1) Four (4) directors of the authority shall constitute a quorum for the purpose of conducting business and exercising its powers.

(2) Action may be taken by the authority upon the affirmative vote of at least four (4) directors. No vacancy on the board shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(3) Notice of meetings shall be given as provided in chapter 2, title 74, Idaho Code, and the bylaws of the authority.

(4) The board may hold any of its meetings by telephone, teleconference or other electronic means, as and to the extent provided in its bylaws.

(5) The board shall act by resolution or order which shall be recorded in its official minutes but need not be published or posted.

(6) Directors shall be compensated for services as provided by [section 59-509\(o\), Idaho Code](#).

History.

[I.C., § 67-8906](#), as added by 2005, ch. 53, § 1, p. 192; am. 2015, ch. 141, § 189, p. 379.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 141, substituted “chapter 2, title 74” for “sections 67-2341 through 67-2347” in subsection (3).

§ 67-8907. Organizational meeting — Chairman — Secretary and treasurer — Executive director — Delegation of power — Surety bond and conflict of interest. — (1) A director designated by the governor shall call and convene the initial organizational meeting of the authority and shall serve as its chairman pro tempore. At such meeting, appropriate bylaws shall be presented for adoption. The bylaws may provide for the election or appointment of officers and the delegation of certain powers and duties and such other matters as the authority deems proper. At such meeting and annually thereafter the board shall elect one (1) of the directors as chairman and one (1) as vice chairman.

(2) The board shall appoint a secretary and a treasurer and may appoint one (1) or more assistant secretaries and assistant treasurers, any of whom may be, but not required to be, a director of the authority, and who shall serve at the pleasure of the board. A single individual may be appointed as secretary-treasurer. They shall receive such compensation for their services as shall be fixed by the board. The secretary or an assistant secretary designated by the board shall keep a record of the proceedings of the board and shall be custodian of all books, documents, and papers filed with the authority, the minute books or journal thereof and its official seal. The secretary or any assistant secretary shall cause necessary copies to be made of all minutes and other records and documents of the authority and may give certificates under the official seal of the authority to the effect that such copies are true copies and all persons dealing with the authority may rely on such certificates. The treasurer shall have custody of and responsibility for the safekeeping of the funds and investments of the authority.

(3) The board may employ an executive officer and one (1) or more additional employees as it shall deem necessary and expedient to carry out its purposes. The executive officer may be, but is not required to be, a director of the authority. The executive officer shall serve at the pleasure of the board and shall receive such compensation as shall be fixed by the board.

(4) The board may delegate by resolution such powers and duties as it may deem proper to one (1) or more of its directors or to its secretary,

executive officer or any assistant officers.

(5) The secretary, the treasurer and any executive officer shall execute a surety bond in the penal sum of five hundred thousand dollars (\$500,000) or, in lieu thereof, the chairman of the authority shall execute a blanket bond covering each director, the secretary, the treasurer, the executive officer and any other employees or officers of the authority, each surety bond to be conditioned upon the faithful performance of the duties of the office or offices covered, to be executed by a surety authorized to transact business in this state as surety. The cost of each such bond shall be paid by the authority.

(6) Notwithstanding any other law to the contrary, it shall not constitute a conflict of interest for a trustee, director, officer, or employee of any electric corporation, electric utility, financial institution, investment banking firm, brokerage firm, commercial bank or trust company, architecture firm, insurance company, or any other firm, person or corporation to serve as a director of the authority, provided such trustee, director, officer, or employee shall abstain from deliberation, action and vote by the authority in each instance where the business affiliation of any such trustee, director, officer, or employee is involved.

History.

I.C., § 67-8907, as added by 2005, ch. 53, § 1, p. 192; am. 2012, ch. 150, § 1, p. 420.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 150, substituted “five hundred thousand dollars (\$500,000)” for “one million (\$1,000,000)” near the beginning of subsection (5).

§ 67-8908. Powers. — (1) The authority shall have the following powers, which are hereby declared to be necessary to enable the authority to carry out and effectuate the purposes and provisions of this chapter, together with all powers incidental thereto or necessary for the performance thereof:

- (a) To have perpetual succession as a body politic and corporate;
- (b) To adopt bylaws for the regulation of its affairs and the conduct of its business;
- (c) To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
- (d) To have and to use a corporate seal and to alter the same at pleasure;
- (e) To maintain an office at such place or places as it may designate;
- (f) To make and execute contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter;
- (g) To acquire, whether by purchase, gift, grant, bequest, devise, exchange, eminent domain or otherwise, own, hold, improve, lease, transfer, assign, pledge and dispose of, any real or personal property or any interest therein necessary or convenient in connection with any facility or its purposes under this chapter; provided however, that the power of eminent domain is limited to only those purposes and participating utilities as authorized by [section 7-701, Idaho Code](#);
- (h) To acquire, construct, reconstruct, renovate, improve, replace, maintain, repair, manage, operate, lease as lessee or lessor, and regulate any facility; to enter into contracts for any and all of such purposes and for the acquisition and management of fuel supplies, provided such is reasonably necessary for the operation and maintenance of any facility; to enter into contracts and agreements to manage risks associated with the purchase and sale of energy and energy commodities, provided such is reasonably necessary for the operation and maintenance of any facility; and shall designate one (1) or more qualified participating utilities as

agent or agents of the authority, as agreed to among the participating utilities, with respect to the foregoing;

(i) To sell, lease or otherwise provide by contract to one (1) or more participating utilities the services, output or product provided by any or all of the facilities undertaken by the authority upon such terms and conditions as the authority and the participating utilities shall deem proper, and to establish, charge, collect and revise from time to time such rents, fees and charges for such services, output or product as provided for in this chapter;

(j) To borrow money and to issue bonds for any of the purposes described in this chapter, to issue refunding bonds and to enter into contracts and agreements determined by the authority to be necessary or desirable to manage its debt service and interest costs;

(k) To establish rules and regulations for the use of facilities and to designate a participating utility as its agent, to establish rules and regulations for the use of the facilities undertaken or operated by such participating utility;

(l) To employ or contract for consulting engineers, architects, attorneys, accountants, construction and financial experts, superintendents, managers, and such other employees and agents as may be necessary in its judgment and to fix their compensation;

(m) To enter into contracts, agreements or other transactions with and accept grants and the cooperation of the United States or any agency thereof or any state or any agency or governmental subdivision thereof, in furtherance of the purposes of this chapter including, but not limited to, the development, maintenance, operation, and financing of any facility and to do any and all things necessary in order to avail itself of such aid and cooperation;

(n) To receive and accept aid or contributions from any source of money, property, labor, or other things of value, to be held, used, and applied to carry out the purposes of this chapter subject to such conditions upon which such grants and contributions may be made, including, but not limited to, gifts or grants from any department or agency of the United States or any state for any purpose consistent with this chapter;

(o) To assign and pledge all or any part of its revenues and income and to mortgage or otherwise encumber any or all of its facilities and the site or sites thereof, whether then owned or thereafter acquired, for the benefit and security of the holders of bonds issued to finance such facilities or any portion thereof;

(p) To make loans to any participating utility to finance the cost of any facilities in accordance with an agreement between the authority and such participating utility;

(q) To make secured or unsecured loans to a participating utility to refinance obligations and indebtedness incurred for facilities undertaken and completed prior to or after the enactment of this chapter when the authority finds that such financing is in the public interest and either alleviates the financial hardship upon the participating utility or is in connection with other financing by the authority for such participating utility or may be expected to result in a cost-effective delivery of electricity to the consumers served by the participating utility, or any combination thereof;

(r) To charge to and equitably apportion its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter among the participating utilities that have entered into contracts with the authority;

(s) To procure insurance against any loss in connection with its property and other assets in such amounts and from such insurers as it deems desirable and to self-insure against such risks as it shall deem to be reasonable;

(t) To invest any funds not needed for immediate use or disbursement, including any funds held in reserve, in:

(i) Bonds, notes and other obligations of the United States or any agency or instrumentality thereof and other securities secured by such bonds, notes or other obligations;

(ii) Money market funds which are insured or the assets of which are limited to obligations of the United States or any agency or instrumentality thereof;

(iii) Time certificates of deposit and savings accounts;

(iv) Commercial paper which, at the time of its purchase, is rated in the highest category by a nationally recognized rating service;

(v) Property or securities in which the state treasurer may invest funds in the state treasury pursuant to [section 67-1210, Idaho Code](#); and

(vi) With respect to any funds representing bond proceeds or amounts pledged to the payment of bonds, such other investments as may be specified in a bond resolution or trust indenture securing bonds of the authority;

(u) To participate in cooperative ventures with any agencies or organizations in order to provide affordable and reliable energy to the residents of the state;

(v) To undertake and finance renewable energy generation projects developed by an independent power producer;

(w) To finance or refinance the cost of conservation measures as provided in [section 67-8926, Idaho Code](#); and

(x) To do all things necessary and convenient to carry out the purposes of this chapter.

(2) Notwithstanding any other provision of this chapter, the authority shall have no power to:

(a) Acquire the operating property of any investor-owned, private, cooperative, municipal or other utility by the exercise of the power of eminent domain;

(b) Provide financing for the acquisition of the operating property of any such utility by or under threat of eminent domain, in either case unless such utility consents in writing to the acquisition; or

(c) Deliver retail electricity or related retail products or services to any ultimate consumer, whether in violation of the Idaho electric supplier stabilization act or otherwise.

(3) The authority is not a “taxing district,” as defined in [section 67-3901, Idaho Code](#), and, for so long as any bonds are outstanding or any contract, agreement or transaction between the authority and a participating utility is in effect, the authority shall not have the power and shall not be authorized

to be a debtor under the U.S. bankruptcy code, title 11 U.S.C., or any other bankruptcy, insolvency, moratorium, liquidation, dissolution or wind-down law.

History.

I.C., § 67-8908, as added by 2005, ch. 53, § 1, p. 192; am. 2005, ch. 311, § 3, p. 964; am. 2015, ch. 59, § 1, p. 160.

STATUTORY NOTES

Cross References.

Electric supplier stabilization act, § 61-332 et eq.

State treasurer, § 67-1201 et seq.

Amendments.

The 2015 amendment, by ch. 59, in subsection (1), added new paragraph (w) and redesignated former paragraph (w) as paragraph (x); and added subsection (3).

Compiler's Notes.

Section 3 of S.L. 2005, ch. 311 amended this section as it read following its enactment by S.L. 2005, ch. 53 (House Bill 106), § 1.

Effective Dates.

Section 4 of S.L. 2015, ch. 59 declared an emergency. Approved March 18, 2015.

§ 67-8909. Development, acquisition and construction of facilities. —

(1) The authority will endeavor to achieve efficiencies and economies of scale by pursuing the development of facilities with multiple participating utilities on a joint and cooperative basis and shall, to the fullest extent practicable, offer all potential participating utilities the opportunity to participate in the development of a facility and the electricity, service or product to be provided by the facility.

(2) The authority shall not commence the development or financing for any facility until it shall have entered into contractual arrangements with one (1) or more participating utilities that contain provisions acceptable to both the authority and the participating utility or utilities and which are determined by the authority to provide adequate assurance that all capital, operating and related costs of the facility will be paid by or provided for by one (1) or more participating utilities.

(3) The authority may acquire, construct and own any facility undertaken by it, may cause such facility to be acquired and constructed on its behalf by one (1) or more participating utilities as its agent, may enter into joint ownership arrangements with respect to any facility, and may enter into contractual arrangements with third parties for the acquisition and construction of a facility.

(4) Upon the payment in full of all bonds issued by the authority to finance or refinance the cost of a facility and upon the discharge of all other obligations of the authority with respect to a facility, the authority will convey title to the facility to the participating utility or utilities with respect to such facility, unless a participating utility requests in writing to the authority that it continue to retain title of the facility on behalf of the participating utility. Any such conveyance shall be in proportion to the funds provided or paid by the participating utility in respect of the debt service and operating costs of the facility. The authority may, in its agreements with a participating utility, pledge and assign its interest in a facility to secure its obligation to convey title to the facility as provided in this section. Any such pledge shall be made in the same manner and with the same effect as provided in [section 67-8915, Idaho Code](#), and shall be

subordinate only to any pledge or assignment to secure the payment of the bonds issued by the authority to finance the development, acquisition or construction of the facility.

History.

I.C., § 67-8909, as added by 2005, ch. 53, § 1, p. 192; am. 2015, ch. 59, § 2, p. 160.

STATUTORY NOTES

Amendments.

The 2015 amendment, by ch. 59, added the last two sentences in subsection (4).

Effective Dates.

Section 4 of S.L. 2015, ch. 59 declared an emergency. Approved March 18, 2015.

§ 67-8910. Management and operation of facilities. — The authority shall cause any facilities undertaken by it to be managed and operated on its behalf by one (1) or more qualified participating utilities, or if no participating utility is qualified, willing or able to manage and operate such facility, by the authority or by an agent so designated by the authority capable and skilled in the management and operation of such a facility. The authority shall enter into joint operating arrangements with participating utilities, designated agents of the authority or others and may enter into any and all contractual arrangements determined by the authority to promote the effective and efficient management and operation of its facilities. The authority shall not commence the management or operation for any facility until it shall have entered into contractual arrangements with one (1) or more participating utilities that contain provisions acceptable to both the authority and the participating utility or utilities and which are determined by the authority to provide adequate assurance that all management, operating, maintenance and related costs of the facility will be paid by or provided for by one (1) or more participating utilities.

History.

I.C., § 67-8910, as added by 2005, ch. 53, § 1, p. 192; am. 2007, ch. 107, § 2, p. 310.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 107, inserted “the authority or by” preceding “an agent” in the first sentence, and added the last sentence.

Effective Dates.

Section 5 of S.L. 2007, ch. 107 declared an emergency. Approved March 20, 2007.

§ 67-8911. Sale of electricity, product or service from facilities — Charges. — (1) The authority shall operate on a not-for-profit basis and shall sell the electricity, product or service provided by its facilities to participating utilities at cost, as provided in subsections (2) and (3) of this section. The authority shall contract with one (1) or more participating utilities for the sale of the electricity, product or service provided or to be provided by each facility upon such terms and conditions as the authority shall deem proper and to provide reasonable assurances that the authority will recover all of its costs associated with each of its facilities. Such contracts may contain the agreement of each participating utility to purchase a specified quantity of the output or service provided by a facility, to purchase all or a portion of its requirements for electric generation, transmission or other services from the authority and to make payments to the authority regardless of whether any particular facility is completed, operable, operating, damaged or destroyed, in whole or in part.

(2) The authority shall establish and collect rents, fees and charges for the electricity, product or service from its facilities that it shall find to be necessary in order to produce revenues which, together with all other available moneys, revenues, income and receipts of the authority, will be sufficient:

- (a) To pay, as the same become due, the principal of and interest on the bonds issued to finance or refinance its facilities and to make, create and maintain deposits, reserves and margins required or provided for in any resolution authorizing, or trust agreement securing, bonds of the authority;
- (b) To pay its costs, including its organizational, operational and management costs; and
- (c) To pay for the operation, maintenance, renewal, replacement and repair of its facilities, including necessary reserves and allowances for depreciation and decommissioning costs.

The authority is hereby authorized to fix, revise, charge and collect rents, fees and charges for the use of and for the electricity, products or services

furnished or to be furnished by each facility and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof.

(3) Rents, fees and charges for the electricity, product or service from a facility shall be revised and adjusted by the authority from time to time as necessary so as to provide funds sufficient, together with any other revenues or moneys available therefor, to pay the cost of maintaining, repairing and operating the facility and each and every portion thereof; and, to the extent that the payment of such cost has not otherwise been adequately provided for, to pay the principal of and the interest on outstanding bonds of the authority issued in respect of such facility as the same shall become due and payable.

(4) Notwithstanding the language, terms or definitions contained in sections 61-119 and 61-129, Idaho Code, the authority shall not be considered to be an electrical corporation as provided by [section 61-119, Idaho Code](#), or a public utility as provided by [section 61-129, Idaho Code](#), and the rents, fees and charges established by contract between the authority and one (1) or more participating utilities for the purchase and sale of the output or services provided by any facility shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this state other than the authority provided that any participating utility regulated pursuant to title 61, Idaho Code, shall be required to submit such contract to the commission to the extent required by title 61, Idaho Code.

History.

[I.C., § 67-8911](#), as added by 2005, ch. 53, § 1, p. 192.

STATUTORY NOTES

Cross References.

Public utilities commission, § 61-201 et seq.

§ 67-8912. Cost recovery and rate stabilization charges of participating utilities. — (1) A participating utility contracting with the authority for the electricity, service or product provided by a facility may establish one (1) or more rate stabilization charges, cost recovery charges or power cost adjustment charges as it deems necessary to provide for the payment of all amounts owed by the participating utility to the authority with respect to the facility and otherwise enable the participating utility to stabilize its rates, to protect its consumers from volatile market prices and to insure against market and other risks. Such rate stabilization charges, cost recovery charges or power cost adjustment charges may be established by the participating utility as a separate component of its existing rates and charges or as a new charge.

(2) A participating utility that is subject to rate regulation by the commission shall submit each of its proposed rate stabilization charges, cost recovery charges or power cost adjustment charges to the commission for approval.

(3) Each other participating utility that serves electric consumers in the state but which is not subject to rate regulation by the commission, may establish a rate stabilization charge, cost recovery charge or power cost adjustment charge only after it has provided adequate notice of and a public meeting or hearing on such charge to the members or consumers served by it. A notice shall be deemed to be adequate if:

- (a) It is given at least fifteen (15) days prior to the public meeting or hearing in the manner usually employed by the participating utility to give notice of its hearings or meetings, by mail, publication or otherwise; and
- (b) It provides a brief description of the proposed rate stabilization, cost recovery or power cost adjustment charges and a summary of the purposes for which it is being established.

After the meeting or hearing has been held, the participating utility may proceed to establish and fix the rate stabilization, cost recovery or power cost adjustment charge.

(4) Each participating utility may agree in its contractual arrangements with the authority as to the use and disposition of all or any part of the revenues from any rate stabilization, cost recovery or power cost adjustment charges established by the participating utility. Each participating utility may pledge, and may create and grant a security interest in, all or a portion of such revenues to secure its payment obligations to the authority in respect of any facility. Any such agreement or pledge by a participating utility that is a municipal corporation of the state shall not be deemed to create an indebtedness or liability of such municipal corporation or a loan or donation of its credit within the meaning of any constitutional or statutory provision.

History.

I.C., § 67-8912, as added by 2005, ch. 53, § 1, p. 192.

STATUTORY NOTES

Cross References.

Public utilities commission, § 61-201 et seq.

§ 67-8913. Cooperation with other agencies and subdivisions. — The authority may enter into agreements with any other state body or agency, any other political subdivision of the state and any other public agency, as defined in section 67-2327, Idaho Code, for the joint exercise of powers and the authority and all other public agencies may join or cooperate with each other, either jointly or otherwise, in the exercise of any of their powers for the purpose of planning, undertaking, owning, constructing, or contracting with respect to, a facility.

History.

I.C., § 67-8913, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8914. Exemption from income taxation. — All bonds issued by the authority and the interest thereon and all revenues, fees, charges, gifts, grants, receipts and other moneys of the authority pledged to the payment of its bonds shall at all times be free from the taxes imposed under the Idaho income tax act.

History.

I.C., § 67-8914, as added by 2005, ch. 53, § 1, p. 192.

STATUTORY NOTES

Cross References.

Idaho income tax act, § 63-3001 and notes thereto.

§ 67-8915. Issuance of bonds to finance facilities. — (1) The authority shall have power and is hereby authorized to issue, from time to time, its bonds in such principal amount as it shall determine to be necessary to provide sufficient funds to pay, finance or refinance the cost of any facility, and all other expenditures of the authority incidental and necessary or convenient to carry out its corporate purposes and powers. The cost of any facility shall include all amounts determined by the authority to be necessary or desirable in connection with the acquisition, construction, development, improvement and equipping of a facility including, but not limited to:

- (a) The cost of acquiring all lands, structures, real or personal property, rights, rights-of-way, franchises, easements and interests necessary, used or useful for or in connection with the facility;
- (b) The cost of all machinery and equipment necessary, used or useful in connection with the facility;
- (c) The cost of architectural, engineering and legal services, including studies, surveys, plans and specifications, and related services;
- (d) The cost of interest on bonds prior to and during construction, and if judged advisable by the authority, for a period after completion of such construction, and all other costs incidental to the issuance of bonds by the authority;
- (e) The cost of reserves for future repairs, replacements and additions to a facility, insurance policies and premiums and related costs and expenses; and
- (f) All other costs and expenses determined by the authority to be necessary and incidental to the acquisition, construction, financing and placing in operation of a facility.

The proceeds of the bonds may also be used to provide for the payment of any financial fees and charges, including underwriting discounts, financial advisory, legal and trustee fees and expenses, the premiums for or costs of bond insurance, surety bonds or other forms of credit or liquidity

enhancement, and to provide for any necessary debt service reserves associated with such bonds.

(2) The bonds shall be authorized by resolution or resolutions of the authority, shall be dated, shall mature, shall bear interest, shall be in such form and shall otherwise have such terms and provisions as such resolution or resolutions may provide, except that no bond shall mature more than forty (40) years from the date of its issue. The bonds shall bear interest at such rate or rates, shall be executed in such manner, shall be payable in such medium at such place or places, and be subject to such terms of redemption as such resolution or resolutions may provide. The authority may sell its bonds at public or private sale, at such price or prices as it shall determine.

(3) Any resolution or resolutions authorizing bonds, or any trust indenture or other instrument securing bonds, may contain provisions which shall be a part of the contract or contracts with the holders thereof, as to:

(a) Pledging and assigning all or any part of the revenues of the authority to secure the payment of the bonds, and the use and disposition of such revenues pending the payment of the bonds;

(b) Pledging and assigning all or any part of the assets of the authority including mortgages and obligations securing the same, to secure the payment of the bonds;

(c) The setting aside of reserves or sinking funds and the regulation and disposition thereof;

(d) Limitations on the purpose to which the proceeds of sale of bonds may be applied and limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(e) The procedure, if any, by which the terms of any contract with bondholders may be amended, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(f) Vesting in a trustee or trustees such property, rights, powers and duties in trust as the authority may determine, which may include any or all of

the rights, powers and duties of the trustee appointed by the bondholders pursuant to this chapter;

(g) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the authority to the holders of the bonds and providing for the rights and remedies of the holders of the bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(h) Any other matters, of like or different character, deemed necessary, desirable or appropriate by the authority in connection with the issuance of its bonds.

(4) Any pledge made by the authority shall be valid and binding from the time when the pledge is made; the revenues, moneys or property so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(5) Neither the directors of the authority nor any other person executing such bonds shall be subject to any personal liability or accountability by reason of the issuance thereof.

(6) The authority may from time to time purchase any of its outstanding bonds out of any moneys available to it for such purpose at such price or prices as the authority shall deem reasonable or necessary.

(7) In the discretion of the authority, the bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any bank or trust company organized under the laws of the United States or any state. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be determined by the authority to be reasonable and necessary, including covenants setting forth the duties of the authority in relation to the exercise of its corporate powers, the custody, the safeguarding and application of all moneys, the events of default and the rights and remedies of the

bondholders and the corporate trustee upon the occurrence of an event of default. The authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the operating expenses of the authority. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

(8) Whether or not the bonds are of such form and character as to be negotiable instruments under the terms of the uniform commercial code, the bonds are hereby made negotiable instruments within the meaning of and for all the purposes of the uniform commercial code, subject only to the provisions of the bonds for registration.

History.

I.C., § 67-8915, as added by 2005, ch. 53, § 1, p. 192.

STATUTORY NOTES

Cross References.

Uniform commercial code — negotiable instruments, § 28-3-101 et seq.

§ 67-8916. Refunding bonds. — (1) The authority may provide for the issuance of refunding bonds for the purpose of refunding any bonds then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium thereon, any interest accrued or to accrue to the date of redemption of such bonds and for any additional corporate purpose of the authority. The issuance of such bonds, the maturities, and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the authority in respect of the same shall be governed by the provisions of this chapter which relate to the issuance of bonds, insofar as such provisions may be appropriate therefor.

(2) Refunding bonds may be sold or exchanged for outstanding bonds issued under this chapter and, if sold, the proceeds thereof may be applied, in addition to any other authorized purposes, to the purchase, redemption or payment of such outstanding bonds. Pending the application of the proceeds of any such refunding bonds, with any other available funds, to the payment of the principal, accrued interest, and any redemption premium on the bonds being refunded, and, if so provided or permitted in the resolution authorizing the issuance of such refunding bonds or in the trust agreement securing the same, to the payment of any interest on such refunding bonds and any expenses in connection with such refunding, such proceeds may be invested in such obligations as may be permitted for the defeasance of the outstanding bonds in the resolution or indenture under which they were issued.

History.

I.C., § 67-8916, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8917. Payment of bonds — Nonliability of state. — (1) Bonds issued by the authority shall not constitute or become an indebtedness, or a debt or liability of the state or any agency or subdivision of the state and neither the state nor any of its agencies or subdivisions shall be liable on such bonds nor shall the bonds constitute the giving, pledging or loaning of the faith and credit of the state or any agency or subdivision of the state, but shall be payable solely from the funds provided for their payment. The issuance of bonds under the provisions of this chapter shall not, directly, indirectly or contingently, obligate the state or any agency or subdivision of the state to levy or collect any form of taxes or assessments for their payment or to create any indebtedness payable out of taxes or assessments. Nothing in this chapter shall be construed to authorize the authority to create a debt of the state within the meaning of the constitution or statutes of the state of Idaho or authorize the authority to levy or collect taxes or assessments and all bonds issued by the authority pursuant to the provisions of this chapter are payable and shall state that they are payable solely from the funds pledged for their payment in accordance with the resolution authorizing their issuance or in any trust indenture or mortgage or deed of trust executed as security therefor and are not a debt or liability of the state of Idaho.

(2) The state shall not in any event be liable for the payment of the principal of or interest on any bonds of the authority or for the performance of any pledge, mortgage, obligation or agreement of any kind whatsoever which may be undertaken by the authority. No breach of any such pledge, mortgage, obligation or agreement shall impose any pecuniary liability upon the state or any charge upon its general credit or against its taxing power.

(3) All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter.

History.

I.C., § 67-8917, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8918. State's pledge. — (1) The state pledges to and agrees with the holders of any bonds issued under this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, restrict or impair the rights hereby vested in the authority to acquire, construct, reconstruct, maintain and operate any facility as defined in this chapter or to establish, revise, charge and collect rates, rents, fees and other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized and issued under this chapter, and with the parties who may enter into contracts with the authority pursuant to this chapter, or in any way impair the rights or remedies of the holders of such bonds or of such parties until the bonds, together with the interest thereon, are fully paid and discharged and such contracts are fully performed on the part of the authority.

(2) Nothing in this chapter precludes such limitation or alteration if and when adequate provision is made by law for the protection of the holders of such bonds or those entering into such contracts with the authority.

(3) The authority is authorized to include this pledge and undertaking for the state in such bonds and in such contracts.

History.

I.C., § 67-8918, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8919. Fees. — All expenses of the authority incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter by participating utilities to the authority in the form of application fees, annual service, loan or administrative fees and other negotiated fees as between the authority and the participating utilities and no liability shall be incurred by the authority beyond the extent to which moneys shall have been provided under this chapter, except that for the purposes of meeting the necessary expenses of initial organization and operation until such date as the authority derives moneys from funds provided hereunder, the authority shall be empowered to borrow moneys as may be required for such necessary expenses of organization and operation. Such borrowed moneys shall be repaid within a reasonable time after the authority receives funds provided for under this chapter.

History.

I.C., § 67-8919, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8920. Exemption of real property of authority from levy and sale by execution. — All real property of the authority shall be exempt from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the same nor shall any judgment against the authority be a charge or lien upon its real property; provided however, that the provisions of this section shall not apply to or limit the right of bondholders to foreclose or otherwise enforce any mortgage or other security of the authority or the right of obligees and bondholders to pursue any remedies for the enforcement of any pledge or lien given by the authority on its rents, fees or revenues or the right of obligees or bondholders to pursue any remedies conferred upon the same pursuant to this chapter.

History.

I.C., § 67-8920, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8921. Annual report. — The authority shall submit to the governor and to the legislature within ninety (90) days after the end of its fiscal year a complete and detailed report setting forth:

(1) Its operations and accomplishments; (2) An accounting of its receipts and expenditures during such fiscal year in accordance with the categories or classifications established by the authority for its operating and capital outlay purposes; (3) Its assets and liabilities at the end of its fiscal year, including the status of reserve, special or other funds; (4) A schedule of its bonds outstanding at the end of its fiscal year, together with a statement of the amounts redeemed and incurred during such fiscal year; and (5) Any new or additional facility management and operation activities.

History.

I.C., § 67-8921, as added by 2005, ch. 53, § 1, p. 192; am. 2007, ch. 107, § 3, p. 310.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 107, inserted “and to the legislature” in the introductory language; and added subsection (5).

Effective Dates.

Section 5 of S.L. 2007, ch. 107 declared an emergency. Approved March 20, 2007.

§ 67-8922. Authority obligations are legal investments. — (1) The bonds of the authority shall be legal investments in which all public officers and public bodies of this state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking associations, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or in other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds are also hereby made securities which may properly and legally be deposited with and received by all public officers and bodies of the state or any agency or political subdivisions of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized by law.

(2) In addition to the investments permitted under chapter 12, title 67, Idaho Code, and notwithstanding any limitations on investments contained in that chapter, the state treasurer is authorized and empowered to invest state funds or any other funds in his hands in fixed or variable rate bonds of the authority and to enter into agreements with the authority in connection with any such investment, so long as the term of the investment does not exceed thirty (30) years and the quality of the underlying credit, or the underlying credit as enhanced, is not less than investment grade.

History.

I.C., § 67-8922, as added by 2005, ch. 53, § 1, p. 192; am. 2007, ch. 107, § 4, p. 310.

STATUTORY NOTES

Amendments.

The 2007 amendment, by ch. 107, added the subsection (1) designation and subsection (2).

Effective Dates.

Section 5 of S.L. 2007, ch. 107 declared an emergency. Approved March 20, 2007.

§ 67-8923. Chapter not a limitation of powers. — Neither this chapter nor anything herein contained is or shall be construed as a restriction or limitation upon any powers which the authority might otherwise have under any laws of this state, and this chapter is cumulative to any such powers. This chapter does and shall be construed to provide a complete additional, and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws. This chapter is intended to provide full and exclusive authority for the issuance of bonds and the authority shall not be subject to any other state law applicable to the issuance of bonds, notes and other obligations by the state or its agencies or instrumentalities. Contracts for the construction and acquisition of any facilities undertaken pursuant to this chapter need not comply with the provisions of any other state law applicable to contracts for the construction and acquisition of state owned property. No proceedings, notice or approval shall be required for the issuance of any bonds by the authority or any instrument as security therefor, except as is provided in this chapter.

History.

I.C., § 67-8923, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8924. Constitutionality. — (1) Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent, that if any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of this chapter and the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

(2) If any section, subdivision, paragraph, sentence, clause or provision of this chapter shall be unconstitutional or ineffective, in whole or in part, to the extent that it is not unconstitutional or ineffective it shall be valid and effective and no other section, subdivision, paragraph, sentence, clause or provision shall on account thereof be deemed invalid or ineffective.

History.

I.C., § 67-8924, as added by 2005, ch. 53, § 1, p. 192.

§ 67-8925. Renewable energy generation projects. — The authority may undertake any renewable energy generation project for the benefit of one (1) or more independent power producers and may issue its bonds to finance the cost thereof, all to the same extent and subject to the same provisions applicable to the undertaking and financing of other facilities for the benefit of one (1) or more participating utilities. In furtherance of the foregoing, an independent power producer shall be deemed to be a participating utility with respect to a renewable energy generation project for purposes of sections 67-8909, 67-8910 and 67-8911, Idaho Code.

History.

I.C., § 67-8925, as added by 2005, ch. 311, § 4, p. 192.

§ 67-8926. Conservation measures. — (1) For purposes of this section:

(a) “Conservation” means a reduction in electric power consumption as a result of increases in the efficiency of energy use, production or distribution;

(b) “Conservation measure” means an action, property, facility, equipment, improvement, system or measure to promote conservation that provides a conservation resource that is acquired by a participating utility pursuant to the pacific northwest electric power planning and conservation act, [16 U.S.C. section 839 et seq.](#), including, but not limited to, loans and grants to consumers for insulation, weatherization, increased system efficiency and waste energy recovery by direct application;

(c) “Conservation resource” means actual or planned reductions in electric demand or consumption as a result of one (1) or more conservation measures; and

(d) “Participating utility” means only a federal agency that is a participating utility described in [section 67-8903\(8\)\(b\), Idaho Code](#).

(2) The authority may, under such terms and conditions as are approved by the authority:

(a) Issue bonds to finance or refinance the cost of conservation measures, thereby giving rise to conservation resources that are acquired by a participating utility;

(b) Pledge as security for the bonds payments to be made by a participating utility for its acquisition of conservation resources or other payments to be received in connection with the conservation resources or the associated conservation measures; and

(c) Enter into contracts and agreements, including grant agreements, between or among the authority, a participating utility, any of the customers served by the participating utility and other persons or entities in connection with the acquisition of conservation resources by a participating utility, the financing or refinancing of conservation

measures, the funding, implementation, management or administration of conservation measures, or the administration of funds, including the proceeds of bonds and other moneys relating to conservation resources and conservation measures.

(3) Bonds issued pursuant to this section shall be issued in accordance with [sections 67-8915 through 67-8918, Idaho Code](#), and shall be subject to all provisions of this act applicable to bonds issued by the authority; provided that:

(a) Conservation resources and conservation measures shall not be considered to be a facility, other than for purposes of [section 67-8903\(8\), Idaho Code](#); and

(b) The authority shall not own conservation measures, which may be owned by or on behalf of any other person or entity.

(4) It is hereby determined and declared that all actions taken by the authority pursuant to this section are in furtherance of the purposes of this act, and will promote and achieve conservation of natural resources, efficiencies and economies of scale. This section is supplemental to the other provisions of this act and shall be liberally construed to effectuate the financing of conservation measures by the authority.

History.

[I.C., § 67-8926](#), as added by 2015, ch. 59, § 3, p. 160.

STATUTORY NOTES

Cross References.

Energy resources authority, § 67-8903.

Compiler's Notes.

The term “this act” in subsections (3) and (4) refers to S.L. 2015, Chapter 59, which is codified as §§ 67-8908 and 67-8926.

Effective Dates.

Section 4 of S.L. 2015, ch. 59 declared an emergency. Approved March 18, 2015.

Chapter 90

IDAHO RURAL DEVELOPMENT PARTNERSHIP ACT

Sec.

67-9001. Short title.

67-9002. Legislative findings.

67-9003. Definitions.

67-9004. Idaho rural development partnership created.

67-9005. Responsibilities.

67-9006. Board of directors.

67-9007. Cochairs.

67-9008. Executive director.

67-9009. General membership.

67-9010. Performance evaluations of state employees.

§ 67-9001. Short title. — This act may be referred to and cited as the “Idaho Rural Development Partnership Act.”

History.

I.C., § 67-9001, as added by 2007, ch. 238, § 1, p. 703.

STATUTORY NOTES

Compiler’s Notes.

The term “this act” refers to S.L. 2007, Chapter 238, which is compiled as §§ 67-9001 to 67-9010.

§ 67-9002. Legislative findings. — The legislature finds that:

(1) Rural development has been given a high priority as a means of achieving a sound and mutually beneficial balance between the economies, culture, infrastructure and community vitality of rural and urban areas of Idaho.

(2)(a) During the last half century, the legislature has enacted many laws and established many programs to provide resources to rural communities;

(b) Efforts have been made, and continue to be needed, to coordinate rural development programs; and

(c) During the last decade, the national rural development partnership and its principal components, the national rural development council and state rural development councils, have successfully provided opportunities for collaboration and coordination among federal agencies and between federal agencies and states, nonprofit organizations, the private sector, tribal governments, and other entities committed to rural advancement.

(3) State rural development councils were established in 1990 by Presidential executive order as vehicles to help coordinate rural programs.

(4) The congress of the United States authorized and codified a national system of rural development coordination and cooperation with enactment of the “national rural development partnership act” (7 U.S.C. 2008m).

(5) The national rural development partnership has been recognized as a model of new governance and as an example of the effectiveness of collaboration between the federal, state, local, tribal, private, and nonprofit sectors in addressing the needs of the rural communities.

(6) Partnerships between governmental and nongovernmental entities can extend scarce funding through collaboration and cooperation.

(7) The continued success and efficacy of the Idaho rural development partnership could be enhanced through specific legislative authorization

removing any statutory barriers that could detract from the benefits potentially achieved through the partnership's unique structure.

History.

I.C., § 67-9002, as added by 2007, ch. 238, § 1, p. 703.

STATUTORY NOTES

Compiler's Notes.

For further information on rural development within the United States department of agriculture, see *<https://www.rd.usda.gov>*.

For further information on rural development in Idaho, see *<https://www.rd.usda.gov/id>*.

§ 67-9003. Definitions. — As used in this chapter:

(1) “Agency with rural responsibilities” means any public entity of the state of Idaho that:

- (a) Implements a provision of law targeted at rural areas; or
- (b) Administers a program that has a significant impact on rural areas.

(2) “Community” means a group of people linked by common policy, common social interests and interaction with one another.

(3) “National rural development partnership” means the organization created by the national rural development partnership act (7 U.S.C. 2008m).

(4) “Partnership” means the Idaho rural development partnership established by [section 67-9004, Idaho Code](#).

(5) “Rural area” means:

(a) All the territory of the state of Idaho that is not within the boundary of any standard metropolitan statistical area as defined by the United States office of management and budget;

(b) All territory within any standard metropolitan statistical area described in paragraph (a) of this subsection within a census tract having a population density of less than twenty (20) persons per square mile, as determined according to the most recent census of the United States as of any date; and

(c) Such areas as the partnership may identify as rural.

History.

[I.C., § 67-9003](#), as added by 2007, ch. 238, § 1, p. 703; am. 2016, ch. 90, § 1, p. 278.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 90, added present subsection (2) and redesignated the subsequent subsections accordingly.

Compiler's Notes.

For further information on standard metropolitan statistical areas, see <https://www.census.gov/programs-surveys/metro-micro.html>.

For further information on rural development within the United States department of agriculture, see <https://www.rd.usda.gov>.

For further information on rural development in Idaho, see <https://www.rd.usda.gov/id>.

§ 67-9004. Idaho rural development partnership created. — There is hereby created an independent public body corporate and politic to be known as the “Idaho rural development partnership,” which shall be a public instrumentality of the state and its exercise of the powers conferred by this chapter is and shall be deemed to be the performance of essential public functions and purposes. The Idaho rural development partnership shall be exempt from taxation, and shall be an entity of the state of Idaho as provided in the tort claims act, chapter 9, title 6, Idaho Code, and shall be entitled to all the protection as provided in the tort claims act, chapter 9, title 6, Idaho Code.

History.

I.C., § 67-9004, as added by 2007, ch. 238, § 1, p. 703.

§ 67-9005. Responsibilities. — The partnership's responsibilities shall be to:

- (1) Assess community and economic conditions of rural Idaho;
- (2) Advise the governor and the legislature on public policy and strategies to identify the community and economic development opportunities in rural Idaho;
- (3) Act as a clearinghouse of information and as a referral center on rural programs and policies;
- (4) Conduct outreach to rural communities and facilitate communication between rural residents and public and private organizations that provide services to rural communities;
- (5) Identify organizations, authorities and resources to address various aspects of rural development;
- (6) Serve as a nonpartisan forum for identifying and understanding rural issues from all perspectives;
- (7) Improve intergovernmental coordination, private and public cooperation, and to seek out opportunities for new partnerships to achieve rural development goals within existing governmental and community structures;
- (8) Foster coordinated approaches to rural development that support local initiatives, with an imperative not to usurp the individual missions of any member organizations or duplicate effort;
- (9) Seek solutions to unnecessary impediments to rural development within Idaho;
- (10) Work cooperatively and seek solutions to impediments with the national rural development partnership and other state rural development councils; and
- (11) Submit an annual report to the governor outlining the work and accomplishments of the partnership.

History.

I.C., § 67-9005, as added by 2007, ch. 238, § 1, p. 703; am. 2016, ch. 90, § 2, p. 278.

STATUTORY NOTES**Amendments.**

The 2016 amendment, by ch. 90, inserted “community and economic” in subsection (1); substituted “identify the community and economic development opportunities” for “improve the quality of life” in subsection (2); substituted “within Idaho” for “first within Idaho and then through the national rural development partnership” in subsection (9); inserted “and seek solutions to impediments” in subsection (10); and added subsection (11).

Compiler’s Notes.

For further information on rural development within the United States department of agriculture, see <https://www.rd.usda.gov>.

For further information on rural development in Idaho, see <https://www.rd.usda.gov/id>.

§ 67-9006. Board of directors. — (1) The partnership shall be managed by a board of directors that shall include the following members:

- (a) A representative appointed by the governor;
- (b) The directors from not more than five (5) agencies as appointed by the governor;
- (c) The director of the cooperative extension service in the state of Idaho;
- (d) Representatives from the following federal agencies: the United States department of agriculture's rural development, farm service agency and forest service, the United States department of the interior's bureau of land management, the United States department of commerce's economic development administration, the United States environmental protection agency, and the United States department of housing and urban development;
- (e) Four (4) state legislators consisting of one (1) member appointed by the president pro tempore of the senate, one (1) member appointed by the minority leader of the senate, one (1) member appointed by the speaker of the house of representatives and one (1) member appointed by the minority leader of the house of representatives;
- (f) A representative chosen by each of the federally recognized Indian tribes in the state of Idaho;
- (g) Four (4) representatives from organizations of local government in the state of Idaho, as appointed by the governor, one (1) each representing cities, counties, economic development agencies, and resource conservation and development organizations;
- (h) Two (2) representatives, as appointed by the governor, from for-profit business organizations, to include agribusiness and other businesses operating with special emphasis on rural areas of the state of Idaho;
- (i) A representative of the principal contractor for the United States department of energy's Idaho national laboratory; and

(j) Five (5) rural leaders chosen by the governor representing private entrepreneurs, chambers of commerce, nonprofit and community-based organizations, living in rural Idaho and representing a geographic balance across the state.

(2) Nonvoting, ad hoc members may be included on the board to assist with specific issues and projects as necessary.

(3) Except for appointments by the governor under this section, members of the board of directors shall serve at the pleasure of the organization or entity the member represents. Board members appointed under subsection (1)(j) of this section shall serve four (4) year terms concurrent with the governor's term.

(4) The duties of the board of directors shall be to:

(a) Elect a cochair as provided in [section 67-9007, Idaho Code](#);

(b) Appoint and employ, and at its pleasure discharge, an executive director and to prescribe the duties and fix the compensation of the executive director; and

(c) Establish offices, to incur expenses, to enter into contracts and to create such liabilities as may be reasonable for the proper administration and enforcement of this chapter.

(5) The board of directors shall hold a meeting at least annually. A majority of the members of the board of directors shall constitute a quorum.

History.

[I.C., § 67-9006](#), as added by 2007, ch. 238, § 1, p. 703; am. 2016, ch. 90, § 3, p. 278.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 90, in subsection (1), substituted “appointed by” for “from the executive office of” in paragraph (a), rewrote paragraph (b), which formerly read: “The directors from not more than five (5) agencies with rural responsibilities, these being, unless otherwise seated by the balance of the board of directors, the Idaho departments of

agriculture, commerce, environmental quality, labor, and transportation”, and inserted “as appointed by the governor” in paragraphs (g) and (h); in subsection (3), deleted “though lagging behind by three (3) months the governor’s term” at the end.

Compiler’s Notes.

For further information on the Idaho national laboratory, referred to in paragraph (1)(i), see <https://inlportal.inl.gov/portal/server.pt/community/home>.

§ 67-9007. Cochairs. — (1) The board of directors of the partnership shall have two (2) cochairs, one (1) elected by the partnership's board of directors from among the board's membership, and the other appointed by the governor. The cochair elected by the board of directors shall serve a two (2) year term, and may be reelected until a total of four (4) consecutive years have been served, following which that individual will be disqualified for election to the position of cochair until at least one (1) term of office has intervened.

(2) The duties of the cochairs shall be to: (a) Set operating policies; and (b) Manage the partnership budget and staff, including the hiring of an executive director, subject to approval by the board of directors.

History.

I.C., § 67-9007, as added by 2007, ch. 238, § 1, p. 703; am. 2016, ch. 90, § 4, p. 278.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 90, deleted “from among the state agency directors appointed pursuant to subsection (1)(b) of **section 67-9006, Idaho Code**” at the end of the first sentence of subsection (1) and added “subject to approval by the board of directors” at the end of paragraph (2)(b).

§ 67-9008. Executive director. — The executive director of the partnership shall:

(1) Manage the day-to-day operations of the partnership as directed by the board of directors and the cochair;

(2) Be a person with the skills necessary to manage a diverse public organization effectively and with broad experience in building and sustaining networks and partnerships; and shall be hired through an open and competitive process when a vacancy occurs, after a broad, statewide advertising campaign without any preselection;

(3) Hire an assistant, and such temporary or part-time employees as may be necessary to achieve the partnership's purposes, provided approved by the cochair of the board of directors and the availability of funding.

History.

I.C., § 67-9008, as added by 2007, ch. 238, § 1, p. 703; am. 2016, ch. 90, § 5, p. 278.

STATUTORY NOTES

Amendments.

The 2016 amendment, by ch. 90, deleted former subsection (1), which read: "Be an exempt, full-time position within a department of the executive branch of Idaho state government as designated by the governor" and redesignated the subsequent subsections accordingly.

§ 67-9009. General membership. — The general membership of the partnership shall be open to any and all individuals or organizations desiring to assist with the partnership's purposes, including all local, tribal, state, and federal governments, as well as for-profit and not-for-profit private organizations having an interest in or some responsibility for rural development in the state of Idaho. No voting privileges on the partnership's board of directors are granted by virtue of general membership.

History.

I.C., § 67-9009, as added by 2007, ch. 238, § 1, p. 703.

§ 67-9010. Performance evaluations of state employees. — In conducting the performance evaluation of an employee of an agency who has worked with the partnership, that agency may consider any comments submitted by the partnership in support of the employee.

History.

I.C., § 67-9010, as added by 2007, ch. 238, § 1, p. 703.

Chapter 91

IDAHO OUTDOOR SPORT SHOOTING RANGE ACT

Sec.

67-9101. Definitions.

67-9102. State outdoor sport shooting ranges — Operation and use —
Noise standards — Measurement.

67-9103. Nuisance action.

67-9104. Noise buffering or attenuation for new use.

67-9105. Preemption of local authority.

§ 67-9101. Definitions. — As used in this chapter:

- (1) “Local government” means a county, city or town.
- (2) “Person” means an individual, corporation, partnership, firm, association, joint venture, proprietorship, club or any other legal entity.
- (3) “State outdoor sport shooting range” or “range” means an area owned by the state of Idaho or a state agency for the public use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, archery or any other similar sport shooting. “State outdoor sport shooting range” does not include: (a) Any totally enclosed facility that is designed to offer a totally controlled shooting environment that includes impenetrable walls, floors and ceilings, adequate ventilation, lighting systems and acoustical treatment for sound attenuation; and (b) Any law enforcement or military shooting range.

History.

I.C., § 67-9101, as added by 2008, ch. 116, § 1, p. 322.

CASE NOTES

Constitutionality.

Idaho Outdoor Sport Shooting Range Act, Chapter 91, Title 67, Idaho Code, is a constitutional general law, not a special law. The act and its noise standard apply equally to all non-law enforcement, non-military, state-owned shooting ranges. Additionally, the enactment of the act and its noise standard was not a legislative deprivation of judicial power; rather, it was a valid use of the legislature’s police power. *Hom v. Idaho Fish & Game Dep’t (Citizens Against Range Expansion)*, 153 Idaho 630, 289 P.3d 32 (2012).

§ 67-9102. State outdoor sport shooting ranges — Operation and use — Noise standards — Measurement. — (1) The state agencies responsible for managing state outdoor sport shooting ranges shall establish criteria for the operation and use for each range. The provisions of chapter 26, title 55, Idaho Code, shall not apply to state outdoor sport shooting ranges.

(2) The legislature finds that state outdoor sport shooting ranges should be subject to uniform noise standards as specified in this section.

(3) The noise emitted from a state outdoor sport shooting range shall not exceed an Leq(h) of sixty-four (64) dBA.

(4) Sound pressure measurements shall be made twenty (20) feet from the nearest existing occupied residence, school, hotel, motel, hospital or church and in a location directly between the range and the nearest existing occupied residence, school, hotel, motel, hospital or church. If there are natural or artificial obstructions that prevent an accurate noise measurement, the measurement may be taken within an additional twenty (20) feet radius from the initial measurement location. If access to such location is not available, then sound pressure measurements shall be made at the range property line in a location directly between the range and the nearest existing occupied residence, school, hotel, motel, hospital or church.

(5) Sound pressure measurements shall be made on the A-weighted fast response mode scale. Measurements shall be taken during the noisiest hour of peak use during the operation of the range. Measurements shall be taken using a type 1 sound meter meeting the requirements of ANSI S1.4-1983.

(6) For the purposes of this section:

(a) “A-weighted” means a frequency weighting network used to account for changes in sensitivity as a function of frequency;

(b) “dBA” means A-weighted decibels, taking into account human response to sound energy in different frequency bands;

(c) “Decibel” means the unit of measure for sound pressure denoting the ratio between two quantities that are proportional to power. The number

of decibels is ten (10) times the base ten logarithm of this ratio; and

(d) “Leq(h)” means the equivalent energy level that is the steady state level that contains the same amount of sound energy as a time varying sound level for a sixty (60) minute time period.

History.

I.C., § 67-9102, as added by 2008, ch. 116, § 1, p. 322.

STATUTORY NOTES

Compiler’s Notes.

For further information on ANSI S1.4-1983, referred to in subsection (5), see <https://webstore.ansi.org/Standards/ASA/ANSIS11983R20064a1> 985.

CASE NOTES

Constitutionality.

Idaho Outdoor Sport Shooting Range Act, Chapter 91, Title 67, Idaho Code, is a constitutional general law, not a special law. The act and its noise standard apply equally to all non-law enforcement, non-military, state-owned shooting ranges. Additionally, the enactment of the act and its noise standard was not a legislative deprivation of judicial power; rather, it was a valid use of the legislature’s police power. [Hom v. Idaho Fish & Game Dep’t \(Citizens Against Range Expansion\)](#), 153 Idaho 630, 289 P.3d 32 (2012).

§ 67-9103. Nuisance action. — Notwithstanding any other provision of law to the contrary, a person may not maintain a public or private nuisance action for noise against a state outdoor sport shooting range that is in compliance with this chapter.

History.

I.C., § 67-9103, as added by 2008, ch. 116, § 1, p. 323.

§ 67-9104. Noise buffering or attenuation for new use. — Any new residential use or other new use within one (1) mile of an existing state outdoor sport shooting range shall provide for noise buffers or attenuation devices necessary to satisfy the noise standard prescribed by this chapter. New use as provided by this section shall not give rise to any right of a person to maintain a public or private nuisance action for noise against an existing state outdoor sport shooting range.

History.

I.C., § 67-9104, as added by 2008, ch. 116, § 1, p. 323.

CASE NOTES

Constitutionality.

Idaho Outdoor Sport Shooting Range Act, Chapter 91, Title 67, Idaho Code, is a constitutional general law, not a special law. The act and its noise standard apply equally to all non-law enforcement, non-military, state-owned shooting ranges. Additionally, the enactment of the act and its noise standard was not a legislative deprivation of judicial power; rather, it was a valid use of the legislature's police power. *Hom v. Idaho Fish & Game Dep't (Citizens Against Range Expansion)*, 153 Idaho 630, 289 P.3d 32 (2012).

§ 67-9105. Preemption of local authority. — Local governmental law is herein preempted and local governments shall not have authority to regulate the operation and use of state outdoor sport shooting ranges nor shall they have authority to establish noise standards for state outdoor sport shooting ranges.

History.

I.C., § 67-9105, as added by 2008, ch. 116, § 1, p. 323.

Chapter 92

STATE PROCUREMENT ACT

Sec.

67-9201. Short title.

67-9202. Declaration of policy.

67-9203. Definitions.

67-9204. Division of purchasing — Administrator.

67-9205. Powers and duties of the administrator.

67-9206. Delegation of authority.

67-9207. Procurement training.

67-9208. Solicitations.

67-9209. Bids.

67-9210. Award of contract.

67-9211. Multiple awards.

67-9212. Contracts shall be in writing.

67-9213. Contracts in violation of provisions of the act.

67-9214. Acceptance of property.

67-9215. Preservation and disclosure of records — Exception.

67-9216. Open contracts.

67-9217. Disqualification of vendors.

67-9218. Payment of contractors.

67-9219. Contract oversight.

67-9220. Inventories.

67-9221. Noncompetitive and emergency procurements.

67-9222. Nonowned property.

67-9223. Exchange of state property.

67-9224. Cooperative and group discount purchasing.

67-9225. Procurement by state institutions of higher education.

67-9226. Discounts.

67-9227. Contracts with federal government exempt from certain provisions.

67-9228. Acquisition of property — General services administration federal supply schedule contracts.

67-9229. Application of administrative procedure act.

67-9230. Prohibitions.

67-9231. Penalties.

67-9232. Challenges and appeals.

67-9233. Ethics in procurement.

67-9234. Severability.

§ 67-9201. Short title. — This chapter shall be known and may be cited as the “State Procurement Act.”

History.

I.C., § 67-9201, as added by 2016, ch. 289, § 4, p. 793.

STATUTORY NOTES

Compiler’s Notes.

Prior to the enactment of this chapter by S.L. 2016, Chapter 289, the state procurement laws were codified as § 67-5714 et seq.

§ 67-9202. Declaration of policy. — The Idaho legislature, recognizing that an offered low price is not always indicative of the greatest value, declares it to be the policy of the state:

- (1) To engage in open, competitive acquisitions of property; and
- (2) To maximize the value received by the state with attendant benefits to the citizens.

History.

I.C., § 67-9202, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9203. Definitions. — As used in this chapter:

- (1) “Acquisition” means the process of procuring property.
- (2) “Administrator” means the administrator of the division of purchasing as created by [section 67-9204, Idaho Code](#).
- (3) “Agency” means all officers, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding:
 - (a) The legislative and judicial branches of government;
 - (b) The governor, lieutenant governor, secretary of state, state controller, state treasurer, attorney general and superintendent of public instruction; and
 - (c) A state institution of higher education that complies with the provisions of [section 67-9225, Idaho Code](#).
- (4) “Bid” means a written offer to perform a contract to sell or otherwise supply property in response to a solicitation.
- (5) “Bidder” means a vendor who has submitted a bid on property to be acquired by the state.
- (6) “Contract” means an agreement for the acquisition of property, including a purchase order.
- (7) “Contractor” means a vendor who has been awarded a contract.
- (8) “Director” means the director of the department of administration as created by [section 67-5701, Idaho Code](#).
- (9) “Lowest responsible bidder” means the responsible bidder whose bid reflects the lowest acquisition price to be paid by the state, except that when specifications are valued or comparative performance evaluations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.

(10) “Open contract” means a contract awarded by the state through the division of purchasing as a result of a competitive solicitation to one (1) or more vendors who have agreed to allow all agencies to procure specified property under the terms and conditions set forth in the contract.

(11) “Procure” means to obtain property for state use in a manner other than by gift including, but not limited to, purchase, lease or rent.

(12) “Property” means goods, services, parts, supplies and equipment, both tangible and intangible, including, but not limited to, designs, plans, programs, systems, techniques and any rights or interests in such property.

(13) “Sole source” means the only vendor from whom specific property is available to procure.

(14) “Solicitation” means an invitation to bid, a request for proposal or a request for quote issued pursuant to this chapter for the purpose of procuring property.

(15) “Specifications” means the standards or requirements for property to be procured as explicitly stated in a solicitation or contract.

(16) “State institution of higher education” means Boise state university, Idaho state university or Lewis-Clark state college.

(17) “Vendor” means a person or entity capable of supplying property to the state.

History.

I.C., § 67-9203, as added by 2016, ch. 289, § 4, p. 793; am. 2018, ch. 17, § 7, p. 22.

STATUTORY NOTES

Cross References.

Public utilities commission, § 61-201 et seq.

Amendments.

The 2018 amendment, by ch. 17, in subsection (16), deleted “Eastern Idaho Technical College” following “Boise state university.”

§ 67-9204. Division of purchasing — Administrator. — (1) There is hereby created within the department of administration the division of purchasing. The director shall appoint an administrator for the division, subject to the approval of the governor.

(2) The administrator shall be exempt from the provisions of the state merit system.

(3) The administrator may employ additional personnel as may be necessary.

(4) The administrator may enter into contracts for professional services or assistance when necessary or desirable.

History.

I.C., § 67-9204, as added by 2016, ch. 289, § 4, p. 793.

STATUTORY NOTES

Cross References.

Department of administration, § 67-5701 et seq.

CASE NOTES

Decisions Under Prior Law State Universities.

Powers and duties of department of public works (now division of purchasing) could only pertain to such contracts or purchases as created claims against state. Board of regents of state university could purchase property without compliance with provisions of former chapter governing state purchasing. *State ex rel. Black v. State Bd. of Educ.*, 33 Idaho 415, 196 P. 201 (1921).

§ 67-9205. Powers and duties of the administrator. — The administrator of the division of purchasing:

(1) Shall acquire all property for state agencies according to the provisions of this chapter;

(2) Shall acquire all property by competitive solicitation, except as otherwise provided;

(3) Shall determine, based on the specifications and matters relating to responsibility, the lowest responsible bidder in all competitive solicitations; (4) Shall enter into contracts and any modifications thereto for the acquisition of property on behalf of and in the name of state agencies; (5) Shall, when economically feasible and practical, consolidate solicitations and acquire property in amounts as large as can be efficiently managed and controlled; (6) May, in the evaluation of paper product bids, give those items that meet the recycled content standards as specified by the administrator a five percent (5%) purchasing preference. As such, those qualifying paper products may be considered to cost five percent (5%) less when choosing the lowest responsible bidder; (7) May appoint a deputy who shall have the power to act for the administrator and in the administrator's place while absent, which deputy shall be bonded to the state of Idaho as prescribed by chapter 8, title 59, Idaho Code; (8) May require from any contractor the submission of a performance bond for such sum as will, in the opinion of the administrator, guarantee the faithful performance of such contract, and the amount and requirement therefor shall be set out in the specifications; (9) May enter into open contracts based on actual or estimated requirements;

(10) May enter into contracts, including leases and rentals, for periods of time exceeding one (1) year, provided that such contracts contain no penalty to or restriction upon the state in the event cancellation is necessitated by a lack of funding for any such contract; (11) Is authorized and empowered to formulate rules, subject to the approval of the director, to effect the provisions of this chapter; (12) May enter into negotiations for acquisitions in accordance with established rules of the division; (13) May inspect property supplied by a contractor to determine whether it meets

specifications; (14) May classify, after review with the various agencies, the requirements of the state for all property that may be acquired, and may adopt standards of quality for property, and may establish specifications for acquisition. Each specification shall, until revised or rescinded, apply alike in terms and effect to each future acquisition of the classified property; (15) May delegate authority pursuant to [section 67-9206, Idaho Code](#); and (16) May carry out such acts as are necessary to enforce the provisions of this chapter.

History.

[I.C., § 67-9205](#), as added by 2016, ch. 289, § 4, p. 793.

§ 67-9206. Delegation of authority. — (1) The administrator may delegate such authority as the administrator deems appropriate to an employee of the division, an agency employee or an agency, provided that any such employee or the procurement staff of any such agency demonstrates sufficient competence in procurement as to satisfy the administrator.

(2) A delegation made pursuant to subsection (1) of this section shall be made in writing and shall state with specificity: (a) The nature of the authority being delegated; (b) The terms, conditions and limitations of the delegation; and (c) The duration of the delegation.

(3) The administrator shall, subject to approval of the director, formulate rules specifying: (a) The process by which delegation of authority may be granted, continued or revoked; and (b) The factors influencing the decision to delegate such authority in addition to the demonstrated competence required by subsection (1) of this section.

History.

I.C., § 67-9206, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9207. Procurement training. — (1) A person who may procure property for the state or whose employment with the state includes duties relating to procurement, such as contract administration, management or monitoring, shall undergo procurement training, including a person whose office or employer is excluded from the definition of “agency” under section 67-9203, Idaho Code. The training shall address the person’s specific procurement duties and shall include continuing education requirements when appropriate.

(2) The administrator shall establish training for those persons described in subsection (1) of this section.

History.

I.C., § 67-9207, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9208. Solicitations. — (1) The administrator shall not make or cause to be made any acquisition until a requisition for the property to be acquired has been submitted to the administrator's office by the requisitioning agency. The requisition shall certify to the administrator's satisfaction that there are sufficient funds or balance in appropriations out of which the amount of the requisition may be lawfully paid, except as provided in section 67-9221(3), Idaho Code.

(2) Upon determining that an agency's requisition complies with the provisions of subsection (1) of this section, the administrator shall issue a solicitation. Notice of the solicitation shall be posted in a conspicuous manner as prescribed by rule. The notice shall describe the property to be acquired in sufficient detail to apprise a vendor of the exact nature of the property being sought and shall set forth the bid closing date, time and location.

(3) The administrator may establish by rule exceptions to the notice provisions in subsection (2) of this section; provided however, that the procurements excepted from the notice provisions must be minor in nature.

History.

I.C., § 67-9208, as added by 2016, ch. 289, § 4, p. 793.

CASE NOTES

Decisions Under Prior Law

Alteration of RFP.

Collection of illegally paid money.

Contracts void.

Liability of officers for unauthorized contracts.

Liability of seller under unauthorized contracts.

Statute mandatory.

Alteration of RFP.

Where an RFP solicited proposals from bidders who were to perform an entire educational networking contract which, under the wording of the RFP, would be a “total end-to-end service support solution,” amendments to the purchase orders issued to the successful vendors, making one a contract to provide the backbone for the network and the other a contract to be the E-rate service provider, violate this section and former § 67-5718A [now §§ 67-9210 and 67-9211]. *Syringa Networks, LLC v. Idaho Dep’t of Admin.*, 155 Idaho 55, 305 P.3d 499 (2013).

When the state amended the contracts of two vendors after awarding them the contracts pursuant to an RFP, the amendments, in effect, changed the original request for proposals after the bids were opened. *Syringa Networks, LLC v. Idaho Dep’t of Admin.*, 155 Idaho 55, 305 P.3d 499 (2013).

Collection of Illegally Paid Money.

The state auditor [now controller] had authority to institute, in the name of the state and on his relation, an action to determine whether or not money had been illegally expended, and to require its repayment if so expended. *State ex rel. Parsons v. Bunting Tractor Co.*, 58 Idaho 617, 77 P.2d 464 (1938).

Contracts Void.

Amendments of awarded statewide blanket purchase orders (SBPOs) by the department of administration voided the original SBPOs, where the amendments changed the property to be acquired and the scope of the work to be performed under each SBPO, less than one month after bidding had been closed. *Syringa Networks, LLC v. Idaho Dep’t of Admin.*, 159 Idaho 813, 367 P.3d 208 (2016).

Liability of Officers for Unauthorized Contracts.

Under a statute giving the state a right of action for repayment of money advanced under contracts made in violation of statute mandatorily requiring state purchasing agent [now administrator of division of purchasing] to advertise and receive bids on such equipment, highway director and public works commissioner, who contracted for the purchase of road machinery in violation of the latter statute, but did not receive any benefit from any payment made by the state for the machinery, would not be liable to the

state. *State ex rel. Parsons v. Bunting Tractor Co.*, 58 Idaho 617, 77 P.2d 464 (1938).

Liability of Seller Under Unauthorized Contracts.

Under a statute giving the state a right of action for payment of money advanced under contracts made in violation of statute, mandatorily requiring, state purchasing agent [now administrator of division of purchasing] to advertise and receive bids on purchasing equipment, a tractor company which contracted with highway director and public works commissioner for sale of road machinery to the state in violation of the latter statute and received payments under the contract would be liable to the state. *State ex rel. Parsons v. Bunting Tractor Co.*, 58 Idaho 617, 77 P.2d 464 (1938).

Statute Mandatory.

A statute providing that the state purchasing agent [now administrator of division of purchasing] “may advertise, as hereinafter provided, and award contracts” for supplies and equipment to the lowest responsible bidder was mandatory, in view of the statute immediately following, providing detailed procedure which “shall” be followed in advertising for and taking bids, and other related statutes which would be meaningless if the former statute were not mandatory. *State ex rel. Parsons v. Bunting Tractor Co.*, 58 Idaho 617, 77 P.2d 464 (1938).

OPINIONS OF ATTORNEY GENERAL

Authority of Department.

Except as to certain exempt entities such as the University of Idaho, jurisdiction of projects which cost more than \$5,000 [now \$100,000] resides in the department of administration, division of public works. The procedure for calling of bids set forth in this section must be used as to all contracts let unless an emergency is declared as provided in § 67-5711B. OAG 89-2.

In-House Labor.

When the cost of a project including materials exceeds \$5,000 [now \$100,000], the department of administration, division of public works, may

choose to use in-house maintenance personnel on the project. OAG 89-2.

If a project is within the jurisdiction of the department of administration, the department is empowered to let all contracts which are entered into in connection with the project and is required to follow statutory bid procedures when contracting. However, the statute does not prohibit the department of administration from using in-house personnel in performance of some or all of the labor on a public works project. OAG 89-2.

§ 67-9209. Bids. — (1) In response to a solicitation issued pursuant to section 67-9208, Idaho Code, a vendor seeking to supply the property solicited shall submit a bid in a manner prescribed by rule.

(2) To enhance small business bidding opportunities, the administrator shall seek a minimum of three (3) bids from vendors having a significant Idaho economic presence as defined in [section 67-2349, Idaho Code](#).

(3) All bids received shall be opened at the time and place specified in the solicitation. The bids shall be opened in public view, and a record of each bid shall then and there be made. The administrator shall have the right to reject any and all bids pursuant to rules established for the division.

History.

[I.C., § 67-9209](#), as added by 2016, ch. 289, § 4, p. 793.

§ 67-9210. Award of contract. — (1) The administrator shall award contracts to, and place orders for property with, the lowest responsible bidder. Qualifications for responsibility shall be prescribed by rule.

(2) Where both the bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in [section 67-2349, Idaho Code](#). In connection with the award of any contract for the placement of any order for state printing, binding, engraving or stationery work, the provisions of sections 60-101 and 60-103, Idaho Code, shall apply to the extent that the same may be inconsistent with any requirements contained in this section.

(3) In awarding contracts, the administrator shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin unless permitted by an exception described in [section 67-5909A, Idaho Code](#).

History.

[I.C., § 67-9210](#), as added by 2016, ch. 289, § 4, p. 793; am. 2020, ch. 331, § 4, p. 963.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 331, added subsection (3).

CASE NOTES

Decisions Under Prior Law Invalid Change to RFP.

Where an RFP solicited proposals from bidders who were to perform an entire educational networking contract which, under the wording of the RFP, would be a “total end-to-end service support solution,” amendments to the purchase orders issued to the successful vendors, making one a contract to provide the backbone for the network and the other a contract to be the

E-rate service provider, violates state procurement law. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 155 Idaho 55, 305 P.3d 499 (2013).

§ 67-9211. Multiple awards. — (1) Notwithstanding any provision of this chapter to the contrary, the administrator may make an award of a contract to two (2) or more bidders to furnish the same or similar property when more than one (1) contractor is necessary:

(a) To furnish the types of property and quantities required by state agencies;

(b) To provide expeditious and cost-efficient acquisition of property for state agencies; or (c) To enable state agencies to acquire property that is compatible with property previously acquired.

(2) No award of a contract to multiple bidders shall be made under this section unless the administrator makes a written determination showing that multiple awards satisfy one (1) or more of the criteria set forth in this section.

(3) When a contract for property has been awarded to two (2) or more bidders in accordance with this section, a state agency shall make purchases from the contractor whose terms and conditions regarding price, availability, support services and delivery are most advantageous to the agency.

(4) A multiple award of a contract for property under this section shall not be made when a single bidder can reasonably serve the acquisition needs of state agencies. A multiple award of a contract shall only be made to the number of bidders necessary to serve the acquisition needs of state agencies.

History.

I.C., § 67-9211, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9212. Contracts shall be in writing. — Every contract made by the administrator on behalf of the state shall be in writing and shall be signed manually or electronically by the contracting parties. Every contract shall be filed in the office of the administrator, together with all bids, specifications and other documents and records associated with the acquisition or intended acquisition.

History.

I.C., § 67-9212, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9213. Contracts in violation of provisions of the act. — (1) Prior to award of a contract, if it is determined administratively or in an administrative or judicial review authorized by this chapter that the proposed award of a contract is in violation of this chapter, the solicitation or proposed award shall be canceled or revised to comply with this chapter.

(2) After award of a contract, if it is determined in an administrative or judicial review authorized by this chapter that the award of a contract is in violation of this chapter, the following shall apply:

(a) If the bidder awarded the contract did not act fraudulently or in bad faith:

(i) The contract may be ratified and affirmed by the director upon a declaration of the administrator that immediate delivery of the property is required by public exigencies and that the acquisition of the property satisfies the standards established by the rules of the division of purchasing for an emergency procurement. The ratification shall limit the term of the ratified contract to no more than six (6) months, and any ratification shall be submitted to the board of examiners for approval;

(ii) The contract may be terminated by the director, and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract before termination, plus a reasonable profit. Unless determined by a court, the reasonable profit due to the contractor shall be submitted to the board of examiners for approval; or

(iii) The winning bidder may request return of any goods delivered under the contract that have not been used or distributed to nonstate parties, provided that in the event of a return of goods already paid for, the director may recover the fair market value of the returned goods. The director or the director's designee is authorized to negotiate the return of goods and recovery of payments in the best interests of the state.

(b) If the bidder awarded the contract acted fraudulently or in bad faith:

- (i) The contract may be declared void by the director;
 - (ii) The contract may be ratified and affirmed by the director upon a declaration of the administrator that immediate delivery of the property is required by public exigencies and that the acquisition of the property satisfies the standards established by the rules of the division of purchasing for an emergency procurement. The ratification shall limit the term of the ratified contract to no more than six (6) months, and any ratification shall be submitted to the board of examiners for approval. Ratification shall be without prejudice to the state's right to any damages or remedy it can prove under any theory including, but not limited to, contract or tort; or
 - (iii) The winning bidder may request return of any goods delivered under the contract that have not been used or distributed to nonstate parties, provided that in the event of a return of goods already paid for, the director may recover the fair market value of the returned goods. The director or the director's designee is authorized to negotiate the return of goods and recovery of payments in the best interests of the state.
- (c) Under no circumstances shall a person, including a person challenging a solicitation or an award of a contract or a bidder awarded a contract found in violation of this chapter, be entitled to consequential damages in relation to a solicitation or an award of a contract under this chapter, including consequential damages for lost profits, loss of business opportunities or damage to reputation.
- (d) Except where a contract is ratified, in all cases in which a contract is declared void under paragraph (b) of this subsection, the state shall endeavor to return those goods delivered under the contract that have not been used or distributed to nonstate parties. No further payments shall be made under the contract, and the state is entitled to recover the greater of:
- (i) The difference between payments made under the contract and the actual expenses reasonably incurred under the contract before the contract was voided;
 - (ii) The difference between payments under the contract and the value to the state of the property delivered before the contract was voided.

The value of the property to the state shall be submitted to the board of examiners for approval; or

(iii) If the state returned goods delivered under the contract, the difference between payments made under the contract and the costs to the contractor of such goods plus the actual expenses reasonably incurred under the contract before the contract was voided.

(e) In all cases in which a contract is declared void under paragraph (b) of this subsection, the state shall be entitled to any damages it can prove under any theory including, but not limited to, contract and tort, regardless of its ratification and affirmation of the contract.

(f) In the event of a refusal or delay when payment under paragraph (d) or (e) of this subsection is demanded by the proper officer of the state of Idaho, under whose authority such contract shall have been made or entered into, every person so refusing or delaying, together with that person's surety or sureties, shall be prosecuted at law for the recovery of such moneys.

(3) If it is determined in administrative or judicial review authorized by this chapter that an award or proposed award of a contract is in violation of this chapter, and an employee or officer of the state acted fraudulently or in bad faith, such employee or officer shall be subject to the provisions of [section 67-9233, Idaho Code](#), and chapters 4 and 5, title 74, Idaho Code, as applicable.

(4) Nothing provided in this section shall limit the application of the provisions of title 18, Idaho Code, or the prosecution of any person under such provisions.

History.

[I.C., § 67-9213](#), as added by 2017, ch. 262, § 2, p. 653.

STATUTORY NOTES

Cross References.

Board of examiners, § 67-2001 et seq.

Compiler's Notes.

Former § 67-9213, Void contracts, which comprised I.C., § 67-9213, as added by 2016, ch. 289, § 4, p. 793, was repealed by S.L. 2017, ch. 262, § 1, effective July 1, 2017.

CASE NOTES

Repayment.

This section imposes an obligation on the proper officer of the state of Idaho to seek repayment of money advanced under a SBPO, if repayment is refused or delayed. But it imposes no obligation on the district court to preemptively order that DOA comply with that obligation. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 159 Idaho 813, 367 P.3d 208 (2016) (decided before 2017 revision of section).

OPINIONS OF ATTORNEY GENERAL

Indemnification.

Absent legislative authorization and corresponding appropriation, an indemnification of the United States Department of Agriculture in the permitting process of USDA sites violates this section, *article VIII, section 1 of the Idaho Constitution*, § 59-1015; and, where IDAPA 38.05.01.112.02.a is applicable, § 67-9213. OAG 2019-1.

§ 67-9214. Acceptance of property. — No property to be acquired by an agency shall be accepted by the agency unless the property meets the specifications set forth in the solicitation or contract.

History.

I.C., § 67-9214, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9215. Preservation and disclosure of records — Exception. —

(1) The administrator shall preserve all records relating to solicitations in the administrator's office, and information with respect thereto, in such form as the administrator shall prescribe by rule, for a period of three (3) years after the date of final action, or for a period of time as may be prescribed by a record retention guideline schedule approved by the director. Records preserved under the provisions of this section shall be subject to disclosure according to chapter 1, title 74, Idaho Code.

(2) If a solicitation is canceled prior to award of a contract, the administrator shall immediately return all bids to the submitting vendors or delete bids that were received electronically. Bids returned or deleted pursuant to this subsection shall not be subject to disclosure under chapter 1, title 74, Idaho Code.

History.

I.C., § 67-9215, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9216. Open contracts. — (1) If property is available on an open contract, then all agencies seeking to procure such property must do so from the open contract. Provided however, that the administrator may grant an exemption to a requesting agency if the administrator determines that an exemption would be in the best interest of the state.

(2) A request for an exemption shall be made in writing and explain why the exemption would be in the best interest of the state.

(3) The administrator's determination to grant an exemption shall be made in writing and explain the justification for the exemption.

(4) The administrator shall make an annual report to the legislature on the first day of the regular session, which report shall detail: (a) The exemptions requested during the previous year; (b) Whether the exemptions were granted or denied; and (c) The reason each exemption was granted or denied.

History.

I.C., § 67-9216, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9217. Disqualification of vendors. — (1) A disqualified vendor may not submit a bid.

(2) A vendor may be disqualified by the administrator for any of the following reasons:

- (a) Failure to perform according to the terms of any contract;
- (b) Attempts by whatever means to cause specifications to be drawn so as to favor a specific vendor;
- (c) Use of the provisions of this chapter to obstruct or unreasonably delay acquisitions by the state;
- (d) Perjury in a vendor disqualification hearing;
- (e) Knowingly violate the provisions of this chapter; or
- (f) Debarment, suspension or ineligibility from federal contracting of the vendor, its principals or its affiliates.

(3) A vendor shall be notified by registered mail within ten (10) days of the vendor's disqualification by the administrator. The vendor may, within thirty (30) days of the receipt of such notice, request a hearing, which shall be held in accordance with chapter 52, title 67, Idaho Code.

(4) In lieu of disqualification, the determinations officer at a hearing conducted pursuant to subsection (3) of this section may recommend to the director specific conditions to the vendor's continued participation in acquisitions by the state.

(5) Disqualification or conditions may be imposed for a period of not less than six (6) months or not more than five (5) years.

(6) For purposes of this section, "obstruction" means a lack of success in more than fifty percent (50%) of the specification challenges made in each of three (3) different acquisitions during any twenty-four (24) month period.

History.

I.C., § 67-9217, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9218. Payment of contractors. — (1) Within ten (10) days after the property acquired is delivered as called for by the specifications, the acquiring agency shall complete all processing required of that agency to permit the contractor to be paid according to the terms of the contract.

(2) Within ten (10) days of receipt of the documents necessary to permit payment of the contractor according to the terms of the contract, the state controller shall cause a warrant to be issued in favor of the contractor and delivered.

(3) Contracts let or entered into by or through the division of purchasing are exempt from the provisions of [section 67-2302, Idaho Code](#); provided however, that late contract payments may be assessed interest by the contractor at the rate set forth in [section 63-3045, Idaho Code](#), unless another rate is established by the contract.

History.

[I.C., § 67-9218](#), as added by 2016, ch. 289, § 4, p. 793.

STATUTORY NOTES

Cross References.

State controller, § 67-1001 et seq.

§ 67-9219. Contract oversight. — (1) Subject to approval of the director, the administrator shall formulate rules that establish policies and procedures relating to the administration, management, monitoring and oversight of contracts entered by an agency.

(2) Any officer, institution or entity that is excluded from the definition of “agency” under [section 67-9203, Idaho Code](#), but that may enter contracts obligating the state, shall establish policies and procedures relating to the administration, management, monitoring and other oversight of such contracts.

(3) Policies and procedures established pursuant to subsection (1) or (2) of this section shall define the roles and responsibilities of those persons assigned to administer, manage, monitor or otherwise oversee state contracts.

(4) Each officer, agency, institution or entity that may enter contracts obligating the state, regardless of whether such officer, agency, institution or entity is included in the definition of “agency” under [section 67-9203, Idaho Code](#), shall make an annual report to the legislature on all qualifying contracts entered into by the officer, agency, institution or entity during the previous year. The report shall be made on the first day of the regular legislative session and shall include the following information for each contract: (a) The amount;

(b) The duration; (c) The parties; and (d) The subject.

(5) For purposes of this section, a qualifying contract is one valued at more than one million five hundred thousand dollars (\$1,500,000) over the duration of the contract and that is: (a) Awarded as a result of a sole source or other noncompetitive procurement pursuant to [section 67-9221, Idaho Code](#); (b) A multiyear contract; or (c) Part of a multiple award.

History.

[I.C., § 67-9219](#), as added by 2016, ch. 289, § 4, p. 793.

§ 67-9220. Inventories. — Every agency shall submit to the administrator, at such times as the administrator may require, a written statement containing full information as to all property then in the agency's possession and the estimated requirements of the agency for such period as the administrator may designate. Further, the administrator may, at any time, inspect or cause to be inspected and inventoried all such property in any agency, and it shall be the duty of each officer and employee thereof to assist and furnish to the administrator full information for purposes of such examination or investigation.

History.

I.C., § 67-9220, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9221. Noncompetitive and emergency procurements. — (1) The administrator may allow noncompetitive procurements when:

(a) A particular savings to the state may be obtained through the use of educational discounts, reverse public auctions or acquisition of federal surplus or excess property; (b) The property is available only from a sole source; (c) Immediate delivery of the property is required by public exigencies and the administrator has declared that an emergency exists; or (d) Other circumstances justify a noncompetitive procurement in the opinion of the director and the administrator.

(2) Prior to procuring property from a sole source, the administrator shall post notice of a sole source procurement, unless the property is required for a life-threatening situation or a situation that is immediately detrimental to the public welfare or property. The notice shall be posted in a conspicuous manner as prescribed by rule.

(3) When the administrator has declared an emergency, payment vouchers may be issued on behalf of an agency without sufficient funds to make an emergency procurement. A payment voucher shall include a statement of justification for the emergency procurement.

History.

I.C., § 67-9221, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9222. Nonowned property. — (1) Bids submitted for the acquisition of any property, the terms of payment for which are other than those of a procurement with attendant passage of title, shall be prepared on a basis that will allow the state full unlimited use, except for those periods required by the owner of such property for normal maintenance, without incurring additional costs to the state beyond those included in the bid price submitted.

(2) Any exercise by the state of an option to acquire previously nonowned property, or any other procedure that shall serve to pass title to the state where no passage of title existed before, shall be deemed to be a new acquisition and, prior to execution, all applicable provisions and procedures of this chapter shall be exercised.

History.

I.C., § 67-9222, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9223. Exchange of state property. — (1) Whenever an agency owns property no longer economical to use, the administrator may dispose of such property by exchanging the same in part payment for new property, as provided for in this section. The administrator shall include in the solicitation a full description of the property to be exchanged as part payment and shall permit vendors to examine the same. The contract shall be awarded on the basis of net cost to the state after allowance for the property to be exchanged in part payment. In addition, the administrator may permit an exchange of property in part payment for new property acquisitions from contracts for the same or similar property.

(2) Exchange of property pursuant to this section will be permitted only when it is determined by the administrator that all other methods of disposal of the property sought to be exchanged will yield less value to the state.

History.

I.C., § 67-9223, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9224. Cooperative and group discount purchasing. — (1) The administrator may authorize an agency to:

(a) Become a participating member of a group discount purchasing organization;

(b) Participate in, sponsor, conduct or administer a cooperative purchasing agreement for property with one (1) or more public agencies, independent of the requirements of [section 67-2329, Idaho Code](#); or

(c) Utilize contracts of other public agencies within this state upon determining that the contract was let in a manner that constitutes competitive bidding consistent with the requirements of this chapter and is otherwise in the best interest of the state.

(2) The state's participation in a cooperative purchase or group discount purchasing organization must be formalized by a written agreement.

(3) The state's entrance fee or participation fee in a group discount purchasing organization must be based on criteria applied to all other members of the organization.

(4) Any agreement entered into pursuant to subsection (2) of this section shall be maintained on file with the division as well as with the agency entering into the agreement.

History.

[I.C., § 67-9224](#), as added by 2016, ch. 289, § 4, p. 793; am. 2017, ch. 188, § 1, p. 426.

STATUTORY NOTES

Amendments.

The 2017 amendment, by ch. 188, added “Cooperative and” in the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

§ 67-9225. Procurement by state institutions of higher education. —

(1) A state institution of higher education may establish policies and procedures for procuring property that shall be substantially consistent with the requirements for procuring property as set forth in this chapter and that shall be approved by the state board of education. When the state board of education has approved such policies and procedures for a state institution of higher education, the institution shall not be subject to the provisions of this chapter, except as provided in subsection (2) of this section.

(2) When the state enters into an open contract, a state institution of higher education must use the open contract, or the institution may procure property from a vendor that is not party to the open contract if the cost to the institution would be equal to or less than the price of the property under the open contract.

History.

I.C., § 67-9225, as added by 2016, ch. 289, § 4, p. 793; am. 2017, ch. 187, § 1, p. 425.

STATUTORY NOTES

Cross References.

State board of education, § 33-101 et seq.

Amendments.

The 2017 amendment, by ch. 187, rewrote subsection (2), which formerly read: “When the state enters into an open contract, no state institution of higher education shall fail to use such contract; provided however, that if the property to be acquired may be procured at equal or less expense to the institution from a vendor that is not party to the open contract, then the institution may, at the institution’s discretion, procure the property from the nonparty vendor”.

§ 67-9226. Discounts. — (1) Whenever an employee of an agency is charged with the responsibility of procuring property for and on behalf of the state, the employee shall, if possible, negotiate discounts normally given in the ordinary course of business including, but not limited to, discounts for prompt payment and discounts for bulk acquisitions.

(2) It shall be the duty of the administrator to prescribe by rule the manner by which to obtain discounts.

History.

I.C., § 67-9226, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9227. Contracts with federal government exempt from certain provisions. — The administrator, on behalf of any agency, and the comparable purchasing officers of the several political subdivisions, municipal corporations and public agencies of the state on behalf of such political subdivisions, municipal corporations and public agencies, within the limits of available appropriations and requisitions made for acquisition thereof, may enter into any contract with the United States of America, or with any agency thereof, or with any agency established for disposition or distribution of surplus federal properties within this state, for the acquisition of any property, real or personal, without regard to provisions of law that require:

(1) The posting of notices; (2) Public advertising; (3) Inviting or receiving competitive bids; or (4) Delivery of property acquired before payment in any case in which delivery may be constructively accomplished without manual possession.

History.

I.C., § 67-9227, as added by 2016, ch. 289, § 4, p. 793.

§ 67-9228. Acquisition of property — General services administration federal supply schedule contracts. — Notwithstanding any provision in this chapter to the contrary, the administrator may, instead of soliciting bids, contract for property at a price equal to or less than the contractor's current federal supply contract price for sales to the general services administration of the United States without the use of competitive bids, so long as the contractor has indicated a willingness in writing to extend such contractor pricing, terms and conditions to the administrator, and the administrator considers the price to be advantageous to the state.

History.

I.C., § 67-9228, as added by 2016, ch. 289, § 4, p. 793.

STATUTORY NOTES

Compiler's Notes.

For more information on the general services administration of the United States, see *<https://www.gsa.gov>*.

§ 67-9229. Application of administrative procedure act. — (1) All rules of the division of purchasing shall be adopted in accordance with the provisions of chapter 52, title 67, Idaho Code. Only appeals conducted as contested cases pursuant to section 67-9232(3)(a)(iii), Idaho Code, shall be subject to the judicial review provisions of chapter 52, title 67, Idaho Code. This section shall not impair any contract right or contract remedy that may exist between the state and a properly licensed contractor or vendor.

(2) A determinations officer appointed by the director pursuant to the provisions of this chapter may subpoena witnesses and evidence and administer oaths.

(3) In the event that a determinations officer is appointed pursuant to the provisions of [section 67-9232, Idaho Code](#), any vendor who has submitted a bid in the process under review shall, notwithstanding any other disability, have standing to intervene in the proceeding as a party, and such intervenor may participate in the purchase appeal or appeal from any final order entered in a contested case conducted under [section 67-9232\(3\)\(a\)\(iii\), Idaho Code](#).

History.

[I.C., § 67-9229](#), as added by 2016, ch. 289, § 4, p. 793.

§ 67-9230. Prohibitions. — (1) No contract or any interest therein shall be transferred by the contractor to whom such contract is given to any other party without approval in writing by the administrator and by the board of examiners pursuant to section 67-1027, Idaho Code. Transfer of a contract without approval shall cause the annulment of the contract so transferred, at the option of the state. All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state.

(2) No member of the legislature or any officer or employee of any branch of the state government shall directly, himself, or by any other person in trust for him or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract made or entered into by or on behalf of the state of Idaho, if made by, through, or on behalf of the department in which he is an officer or employee; or if made by, through or on behalf of any other department unless the same is made after competitive bids.

(3) Except as provided in this chapter, no officer or employee shall influence or attempt to influence the award of a contract to a particular vendor, or to deprive or attempt to deprive any vendor of a contract.

(4) No officer or employee shall conspire with a vendor or its agent, and no vendor or its agent shall conspire with an officer or employee, to influence or attempt to influence the award of a contract, or to deprive or attempt to deprive a vendor of a contract.

(5) No officer or employee shall fail to use an open contract except as provided in this chapter.

(6) No officer or employee shall accept property knowing that the property does not meet specifications or other acceptance criteria set forth in the contract.

(7) Deprivation, influence or attempts thereat shall not include written reports, based upon substantial evidence, sent to the administrator concerning matters relating to the responsibility of vendors.

(8) No vendor or related party, or subsidiary, or affiliate of a vendor, may submit a bid to obtain a contract to provide property to the state, if the

vendor or related party, or affiliate or subsidiary was paid for services used in preparing the specifications or if the services influenced the procurement process.

History.

I.C., § 67-9230, as added by 2016, ch. 289, § 4, p. 793.

STATUTORY NOTES

Cross References.

Board of examiners, § 67-2001 et seq.

§ 67-9231. Penalties. — (1) Any person convicted of a violation of subsection (1), (2), (3) or (8) of section 67-9230, Idaho Code, shall be guilty of a misdemeanor.

(2) Any person convicted of a violation of subsection (4) of **section 67-9230, Idaho Code**, shall be guilty of a felony.

(3) Any officer or employee found to have violated the provisions of subsection (5) or (6) of **section 67-9230, Idaho Code**, may, by order of a determinations officer appointed by the director, be suspended without pay for not more than ninety (90) working days, have a reprimand entered in his personnel file, or both.

History.

I.C., § 67-9231, as added by 2016, ch. 289, § 4, p. 793.

STATUTORY NOTES

Cross References.

Punishment for felony when not otherwise provided, § 18-112.

Punishment for misdemeanor when not otherwise provided, § 18-113.

§ 67-9232. Challenges and appeals. — (1) Bid specifications.

(a) There shall be, beginning with the date of receipt of notice, a period of not more than ten (10) working days in which any vendor, qualified and able to sell or supply the items to be acquired, may notify the administrator in writing of his intention to challenge the specifications and shall specifically state the exact nature of his challenge. The specific challenge shall describe the location of the challenged portion or clause in the specification document, unless the challenge concerns an omission, explain why any provision should be struck, added or altered, and contain suggested corrections.

(b) Upon receipt of the challenge, the administrator shall either deny the challenge, and such denial shall be considered the final agency decision, or he shall present the matter to the director for appointment of a determinations officer. If the director appoints a determinations officer, then all vendors, who are invited to bid on the property sought to be acquired, shall be notified of the appeal and the appointment of a determinations officer and may indicate in writing their agreement or disagreement with the challenge within five (5) days. The notice to the vendors may be electronic. Any vendor may note his agreement or disagreement with the challenge. The determinations officer may, on his own motion, refer the challenge portion and any related portions of the challenge to the author of the specification to be rewritten with the advice and comments of the vendors capable of supplying the property, rewrite the specification himself and/or reject all or any part of any challenge. If specifications are to be rewritten, the matter shall be continued until the determinations officer makes a final determination of the acceptability of the revised specifications.

(c) The administrator shall reset the bid opening no later than fifteen (15) days after final determination of challenges or the amendment of the specifications. If the administrator denies the challenge, then the bid opening date shall not be reset.

(d) The final decision of the determinations officer or administrator on the challenge to specifications shall not be considered a contested case

within the meaning of the administrative procedure act; provided that a vendor disagreeing with specifications may include such disagreement as a reason for asking for appointment of a determinations officer pursuant to subsection (3) of this section.

(2) Nonresponsive bids.

(a) There shall be, beginning with the day following receipt of notice of rejection, a period of five (5) working days in which a bidder whose bid was found nonresponsive may appeal such decision to the director of the department of administration. A nonresponsive bid, within the meaning of this chapter, is a bid that does not comply with the bid invitation and specifications and shall not apply to a vendor whose bid is considered but who is determined not to be the lowest responsible bidder as defined in this chapter. The director shall:

(i) Deny the application; or

(ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's decision of bid nonresponsiveness.

(b) The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's nonresponsive bid decision. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.

(3) Lowest responsible bidder.

(a) A vendor whose bid is considered may, within five (5) working days following receipt of notice that he is not the lowest responsible bidder, apply to the director for appointment of a determinations officer. The application shall set forth in specific terms the reasons why the administrator's decision is thought to be erroneous. Upon receipt of the application, the director shall within five (5) working days:

(i) Deny the application, and such denial shall be considered the final agency decision;

(ii) Appoint a determinations officer to review the record to determine whether the administrator's selection of the lowest responsible bidder is correct; or

(iii) Appoint a determinations officer with authority to conduct a contested case hearing in accordance with the provisions of chapter 52, title 67, Idaho Code.

(b) A determinations officer appointed pursuant to paragraph (a)(ii) of this subsection shall inform the director by written recommendation whether, in his opinion, the administrator's selection of the lowest responsible bidder is correct. The determinations officer in making this recommendation may rely on the documents of record, statements of employees of the state of Idaho participating in any phase of the selection process, and statements of any vendor submitting a bid. A contested case hearing shall not be allowed and the determinations officer shall not be required to solicit statements from any person. Upon receipt of the recommendation from the determinations officer, the director shall sustain, modify or reverse the decision of the administrator on the selection of the lowest responsible bidder, or the director may appoint a determinations officer pursuant to paragraph (a)(iii) of this subsection.

(c) A determinations officer appointed pursuant to paragraph (a)(iii) of this subsection shall conduct a contested case hearing and upon conclusion of the hearing shall prepare findings of fact, conclusions of law and a recommended order for the director of the department of administration. Upon receipt of the findings of fact, conclusions of law and recommended order, the director shall enter a final order sustaining, modifying or reversing the decision of the administrator on the selection of the lowest responsible bidder.

(4) Sole source procurement.

(a) In the case of a sole source procurement, there shall be a period of not more than five (5) working days from the last date of public notice in which any vendor, able to sell or supply the property to be acquired, may notify the administrator, in writing, of his intention to challenge the sole source procurement and briefly explain the nature of the challenge.

(b) Upon receipt of the challenge, the director shall either:

(i) Deny the application; or

(ii) Appoint a determinations officer to review the record and submit a recommended order to the director to affirm or reverse the administrator's sole source determination.

(c) The director shall, upon receipt of a written recommendation from the determinations officer, sustain, modify or reverse the administrator's sole source determination. An appeal conducted under the provisions of this subsection shall not be considered a contested case and shall not be subject to judicial review under the provisions of chapter 52, title 67, Idaho Code.

(5) The administrator may, on his own initiative, file a complaint with the director for a hearing before a determinations officer. The director shall appoint a determinations officer who shall make written recommendations to the director and the director shall render whatever decision is necessary to resolve the complaint.

(6) The director is hereby authorized and directed to appoint a determinations officer whenever one is required by this chapter. The officer shall meet and render whatever determination is called for. When a complaint is filed pursuant to subsection (2) of this section, no bid may be awarded until the final decision is rendered by the director; provided that in all other cases where a determinations officer is appointed by the director, the director shall have the power to allow the acquisition contract to be awarded to the successful bidder prior to or after the decision of the determinations officer if he determines such award to be in the best interests of the state. Any determinations officer appointed pursuant to this section shall exist only for the duration of unresolved complaints on an acquisition and shall be dismissed upon resolution of all such complaints. The determinations officer shall be guided in his determination by the best economic interests of the state for both the near future and more extended periods of time. In addition to the powers conferred on the determinations officer, the director may:

(a) Impose the penalty prescribed by [section 67-9231\(3\), Idaho Code](#);

(b) Enjoin any activity that violates this chapter;

(c) Direct that bids be rejected or sustained;

- (d) Direct that specifications be rejected, sustained or modified; and
- (e) Direct further legal action.

(7) Challenges or appeals conducted pursuant to subsection (1), (2), (3)(a)(i) or 3(a)(ii) of this section shall not be considered to be a contested case as that term is defined in the administrative procedure act. An appeal conducted pursuant to subsection (3)(a)(iii) of this section shall be conducted as a contested case according to the provisions of chapter 52, title 67, Idaho Code.

History.

I.C., § 67-9232, as added by 2016, ch. 289, § 4, p. 793.

STATUTORY NOTES

Cross References.

Administrative procedure act, § 67-5201 et seq.

CASE NOTES

Decisions Under Prior Law

Subcontractors.

Waiver to contest bidding process.

Subcontractors.

When the state amended a contract after awarding that contract to two contractors, a subcontractor injured by the amendment was not required to exhaust administrative remedies under this section before seeking judicial relief. This section provides the subcontractor, who was not a party to the contract, with no administrative remedies. *Syringa Networks, LLC v. Idaho Dep't of Admin.*, 155 Idaho 55, 305 P.3d 499 (2013).

Waiver to Contest Bidding Process.

Although the Idaho department of administration, division of public works' (DPW) invitation for bids and bidding instructions were flawed, the business waived its right to contest the process by failing to follow both procedures for contesting errors, inconsistencies, and ambiguities within the

bidding documents and by failing to follow the statutory appeal process to challenge the bid documents or DPW's determination. *Fieldturf, Inc. v. State*, 140 Idaho 385, 94 P.3d 690 (2004).

§ 67-9233. Ethics in procurement. — (1) It is the intent of the legislature that all persons involved in the process of procuring property for the state conduct themselves in a manner that protects the public interest and fosters confidence in the integrity of the process. To that end, this section shall apply to all such persons, including:

(a) State officers, even if the officer or officer's employer is excluded from the definition of "agency" under [section 67-9203, Idaho Code](#);

(b) State employees, even if the employee works for an officer, institution or entity that is excluded from the definition of "agency" under [section 67-9203, Idaho Code](#); and

(c) Vendors or any person acting on behalf of a vendor.

(2) In any matter relating to state procurement, it is an unethical breach of the public trust to:

(a) Knowingly attempt to realize personal gain through state office or employment by any conduct inconsistent with this chapter or any other applicable law or rule;

(b) Attempt to influence a state officer or employee to violate the policy or provisions of this chapter or any other applicable law or rule; or

(c) Knowingly violate an applicable law or rule.

(3) Subject to due process requirements, and in addition to any other administrative, civil or criminal sanctions provided by law or rule, a state employee's supervisor may impose the following sanctions on the employee for an unethical breach of the public trust:

(a) A reprimand or warning, either oral or written;

(b) Suspension with or without pay for a specified period of time; or

(c) Termination of employment.

(4) In addition to any other administrative, civil or criminal sanction provided by law or rule, a vendor who commits an unethical breach of the public trust, or whose advocate or representative commits an unethical

breach of the public trust, may be disqualified pursuant to [section 67-9217, Idaho Code](#).

History.

[I.C., § 67-9233](#), as added by 2016, ch. 289, § 4, p. 793.

§ 67-9234. Severability. — Insofar as a provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this chapter.

History.

I.C., § 67-9234, as added by 2016, ch. 289, § 4, p. 793.

Chapter 93

COMMITTEE ON FEDERALISM

Sec.

67-9301. Committee on federalism — Appointment of members — Organization — Powers and duties. [Null and void, effective July 1, 2021.]

STATUTORY NOTES

Compiler's Notes.

S.L. 2019, Chapter 206, S.L. 2019, Chapter 296 and S.L. 2019, Chapter 315 each enacted a new chapter 93 in title 67 of the Idaho Code. S.L. 2019, Chapter 315 remained as enacted. S.L. 2019, Chapter 296 was redesignated by the compiler, through the use of brackets, as chapter 94, title 67, Idaho Code. S.L. 2019, Chapter 206 was redesignated by the compiler, through the use of brackets, as chapter 95, title 67, Idaho Code. The redesignation of the provisions enacted by S.L. 2019, Chapter 206 was made permanent by S.L. 2020, ch. 82, § 39.

§ 67-9301. Committee on federalism — Appointment of members — Organization — Powers and duties. [Null and void, effective July 1, 2021.] — (1) There is hereby created the committee on federalism, which shall consist of ten (10) members, with five (5) members from the senate as appointed by the president pro tempore of the senate, one (1) of whom shall be a member of the minority party and one (1) of whom shall be cochair of the committee, and five (5) members from the house of representatives as appointed by the speaker of the house of representatives, one (1) of whom shall be a member of the minority party and one (1) of whom shall be cochair of the committee. Members shall be appointed based on knowledge of and experience with the United States and Idaho constitutions. The committee is authorized to receive input, advice, and assistance from interested and affected parties who are not members of the legislature.

(2) The committee shall monitor and review federal acts, laws, and regulations that may impact the jurisdiction, governance, and sovereignty of the state of Idaho. The committee shall evaluate whether said federal acts, laws, and regulations are authorized by the United States constitution or if they violate the principles of federalism. The cochairs of the committee may create subcommittees to study various federal matters including, but not limited to, health care, transportation, agriculture, education, and federal lands, and for each subcommittee may appoint one (1) sub-cochair from the senate and one (1) sub-cochair from the house of representatives to act as cochairs of a subcommittee. The sub-cochairs of each subcommittee may appoint ad hoc legislative members and other advisors to serve on the subcommittee but in no event shall a subcommittee have more than seven (7) members, including the sub-cochairs. Any advisors to the subcommittee who are not legislative members shall not be reimbursed from legislative funds for per diem, mileage, or other expenses and shall not have voting privileges regarding the subcommittee's recommendations and proposed legislation. The subcommittees shall report any recommendations or proposed legislation to the committee as a whole. The committee shall from time to time advise the legislature of its findings and recommendations.

(3) The committee shall meet at least twice a year and may be called for special meetings by the cochairs of the committee. Six (6) members shall

constitute a quorum. Members of the committee shall be compensated as provided by the citizens' committee on legislative compensation in the same manner as interim legislative meetings, which compensation shall be paid from the legislative account.

(4) Notwithstanding any other provision of law to the contrary, the committee, acting through the cochairs, may utilize staff and resources within state government.

History.

I.C., § 67-9301, as added by 2019, ch. 315, § 1, p. 939.

STATUTORY NOTES

Null and void, effective July 1, 2021.

This section is null and void, effective July 1, 2021, pursuant to S.L. 2019, ch. 315, § 2.

Cross References.

Citizens' committee on legislative compensation, § 67-406a.

Legislative account, § 67-451.

Chapter 94

OCCUPATIONAL LICENSING REFORM ACT

Sec.

[67-9401]. Short title.

[67-9402]. Declaration of policy.

[67-9403]. Definitions.

[67-9404]. Military education, training, and service — Qualifications for licensure.

[67-9405]. Expedited application — Members of the military, veterans, and spouses.

[67-9406]. Licensure by endorsement — Members of the military, veterans, and spouses.

[67-9407]. Report to legislature.

67-9408. Occupational and professional licensure review committee.

67-9409. Universal licensure.

67-9410. Inquiry regarding the potential impact of a criminal conviction.

67-9411. Evaluation of criminal convictions.

STATUTORY NOTES

Compiler's Notes.

S.L. 2019, Chapter 206, S.L. 2019, Chapter 296 and S.L. 2019, Chapter 315 each enacted a new chapter 93 in title 67 of the Idaho Code. S.L. 2019, Chapter 315 remained as enacted. S.L. 2019, Chapter 296 was redesignated by the compiler, through the use of brackets, as chapter 94, title 67, Idaho Code. S.L. 2019, Chapter 206 was redesignated by the compiler, through the use of brackets, as chapter 95, title 67, Idaho Code. The redesignation of

the provisions enacted by S.L. 2019, Chapter 206 was made permanent by S.L. 2020, ch. 82, § 39.

Idaho Code § [67-9401]

§ [67-9401] **67-9301. Short title.** — This chapter shall be known and may be cited as the “Occupational Licensing Reform Act.”

History.

I.C., § 67-9301, as added by 2019, ch. 296, § 1, p. 877.

§ [67-9402] 67-9302. Declaration of policy. — The Idaho legislature, recognizing a need for occupational licensing reform, declares it to be the policy of the state to adopt a comprehensive and proactive approach to reducing occupational licensing constraints and barriers.

History.

I.C., § 67-9302, as added by 2019, ch. 296, § 1, p. 877.

§ [67-9403] 67-9303. Definitions. — As used in this chapter:

(1) “Honorable conditions” means an honorable discharge or a general discharge “under honorable conditions.”

(2) “Licensing authority” means any agency, bureau, commission, department, division, or professional or occupational licensing board charged with granting, suspending, or revoking the license, certificate, registration, permit, or other authorization of any person to practice a profession or occupation, including but not limited to the professional and occupational licensing boards within the department of self-governing agencies.

(3) “Licensure” means a license, certificate, registration, permit, or other authorization of any person to practice a profession or occupation.

(4) “Military” means the armed forces or reserves of the United States, including the army, navy, marine corps, coast guard, air force, and the reserve components thereof, the national guard of any state, the military reserves of any state, or the naval militia of any state.

(5) “Veteran” means any person who has been discharged or released from active duty in the armed forces under honorable conditions provided the person has served on active duty for a minimum of one hundred eighty (180) consecutive days.

History.

I.C., § 67-9303, as added by 2019, ch. 296, § 1, p. 877.

STATUTORY NOTES

Cross References.

Department of self-governing agencies, § 67-2601.

§ [67-9404] 67-9304. Military education, training, and service — Qualifications for licensure. — A licensing authority shall accept relevant and applicable military education, training, or service by an individual as a member of the armed forces or a veteran toward the qualifications to receive licensure. Each licensing authority shall promulgate applicable rules to implement the provisions of this section.

History.

I.C., § 67-9304, as added by 2019, ch. 296, § 1, p. 877.

§ [67-9405] 67-9305. Expedited application — Members of the military, veterans, and spouses. — A licensing authority shall expedite the application of a member of the military, a former member of the military after discharge under honorable conditions, a veteran, or a spouse of any such person, to receive licensure if such member, former member, veteran, or spouse possesses necessary education, qualifications, licensure, or certification from another state, district, or territory of the United States, or in any branch of the armed forces or the national guard. Each licensing authority shall promulgate applicable rules to implement the provisions of this section.

History.

I.C., § 67-9305, as added by 2019, ch. 296, § 1, p. 877.

§ [67-9406] 67-9306. Licensure by endorsement — Members of the military, veterans, and spouses. — (1) A licensing authority shall establish a procedure for the issuance of licensure by endorsement to a member of the military, a former member of the military after discharge under honorable conditions, a veteran, or a spouse of any such person, if such person possesses current, valid, and unrestricted licensure in another state, district, or territory of the United States, or in any branch of the armed forces or the national guard. Each licensing authority shall promulgate applicable rules to implement the provisions of this subsection.

(2) Subsection (1) of this section shall not apply to a person who is a member of a profession or occupation covered by an interstate licensure compact that the person's home state and Idaho have each adopted. In such a situation, a person shall apply for licensure pursuant to the terms of the applicable licensure compact rather than through licensure by endorsement. A person from a state that has not adopted an interstate licensure compact that Idaho has adopted is eligible for licensure by endorsement, provided that such person is otherwise eligible for licensure by endorsement under this section; however, such licensure shall be valid only in Idaho. A licensing authority for a profession or occupation affected by an interstate licensure compact that Idaho has adopted shall promulgate applicable rules to implement the provisions of this subsection.

History.

I.C., § 67-9306, as added by 2019, ch. 296, § 1, p. 877.

§ [67-9407] 67-9307. Report to legislature. — A licensing authority shall, by January 1, 2020, prepare and deliver to an appropriate germane legislative committee information regarding the rules, if any, implemented under this chapter.

History.

I.C., § 67-9307, as added by 2019, ch. 296, § 1, p. 877.

§ 67-9408. Occupational and professional licensure review committee. — (1) In order to establish oversight of occupational and professional licensure and related issues in Idaho, there is hereby established an occupational and professional licensure review committee.

(2) The committee shall consist of eight (8) members, with four (4) members from the senate, one (1) of whom shall be cochair of the committee, and four (4) members from the house of representatives, one (1) of whom shall be cochair of the committee. Members from the senate shall be appointed by the president pro tempore of the senate, and members from the house of representatives shall be appointed by the speaker of the house of representatives. No more than three (3) members from the senate and no more than three (3) members from the house of representatives shall be from the same political party. Appointments to the committee shall be for the term of office of the member appointed. Any vacancy shall be filled in a manner consistent with the appointment procedure set forth in this subsection, except the appointment shall be for the remainder of the unexpired term. A committee member may be reappointed to the committee.

(3) In addition to conducting sunrise reviews as set forth in this section, the committee is authorized to study and review occupational licensing and certification laws in general in order to determine, as applicable, how the legislature may be able to ease occupational licensing barriers while still protecting the public health and safety. The committee shall meet as often as may be necessary for the proper performance of its duties upon the call of the cochairs.

(4) The committee shall operate for three (3) years and shall make a report to the first regular session of the sixty-seventh Idaho legislature in 2023. The legislature may take subsequent action to extend the duration of the committee or to make it permanent.

(5) Beginning January 1, 2021, the committee shall conduct a sunrise review upon request that a lawful profession or occupational group that is not licensed become licensed. For purposes of this section, a profession or occupation becoming “licensed” means adding a requirement that a person

must hold a license, certificate, registration, permit, or other authorization issued by a licensing authority to engage in such profession or occupation. Sunrise review by the committee shall be required prior to the introduction of any proposed legislation that a lawful profession or occupational group that is not licensed become licensed; provided, however, that a germane committee of the legislature later considering such proposed legislation shall not be bound by the recommendation of the committee. The sunrise review process shall be as follows:

(a) The legislative services office shall prepare and publish an application form to be approved by the committee and used for the sunrise review process.

(b) A requestor shall, prior to the introduction of any proposed legislation, submit the application for sunrise review to the legislative services office. The application shall be submitted by May 1 for review and processing prior to the next regular legislative session.

(c) In addition to any other information requested by the committee or staff, the application shall include a copy of the applicant's proposed draft legislation and a description of:

(i) The requestor's identity and relationship to the profession or occupational group;

(ii) Why licensing or other regulation of the profession or occupation is necessary to protect against present, recognizable, and sufficient harm to the health, safety, or welfare of the public to warrant the regulation proposed;

(iii) Why the proposed licensing or other regulation is the least restrictive regulation necessary to protect against present, recognizable, and sufficient harm to the health, safety, or welfare of the public to warrant the regulation proposed;

(iv) Why the public cannot be effectively protected by other means;

(v) Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the direct and indirect costs to consumers, will be outweighed by the benefits of the proposed licensing or other regulation;

- (vi) Whether the proposed licensing or other regulation will have an unreasonably negative effect on job creation, job retention, or wages in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to continue to practice or to find employment; and
 - (vii) Any other relevant information.
- (d) With respect to an application timely received by the legislative services office by May 1:
- (i) By August 1, the legislative services office shall submit a report with factual analysis to the committee and the applicant. Such report shall be made available to the public. Such report shall verify the contents of an application and submitted information and address any other related factual matters, but shall not contain a recommendation.
 - (ii) By October 1, the committee shall review such application and submitted information and the associated report prepared by the legislative services office, along with any other relevant information, and hold a public hearing on such application.
 - (iii) By November 1, the committee shall prepare a written recommendation as to whether a requested occupation or profession should be licensed in the manner set forth in the application and shall deliver such recommendation to the president pro tempore of the senate and the speaker of the house of representatives for subsequent delivery to the appropriate germane committee chairpersons. Such written recommendation may include nonmandatory suggestions as to how the application, including the proposed legislation, may be improved. An applicant receiving such suggestions shall be encouraged to follow the recommended suggestions of the committee before offering the legislation for introduction during the next legislative session.

History.

I.C., § 67-9408, as added by 2020, ch. 175, § 1, p. 500.

STATUTORY NOTES

Cross References.

Legislative services office, § 67-701 et seq.

§ 67-9409. Universal licensure. — (1) A licensing authority shall establish a procedure for the issuance of licensure to a person who:

- (a) Possesses current, valid, and unrestricted licensure in another state, district, or territory of the United States; and
- (b) Demonstrates competency in the profession or occupation through methods determined by the licensing board or commission.

(2) Each applicant for universal licensure under this section must apply to the applicable licensing authority for relevant licensure. An applicant under this section shall be subject to the laws regulating the person's practice in Idaho and is subject to the applicable licensing authority's jurisdiction. For purposes of this section, the term "licensure" means a license, certificate, registration, permit, or other authorization to practice a profession or occupation.

(3) To determine whether an applicant for universal licensure who possesses the licensure requirements established in subsection (1) of this section is otherwise qualified for licensure under Idaho law, a licensing authority shall require an applicant to complete an application, submit supporting materials, and undergo the same background checks as required of other applicants for licensure.

(4) In addition to the requirements set forth in this section, if it administers an examination as part of the application requirements, a licensing authority may require an applicant to take and pass all or a portion of such examination as may be necessary to demonstrate competence to practice in Idaho.

(5) An applicant for universal licensure shall pay all applicable fees and shall be subject to all applicable requirements related to maintaining licensure as established by the licensing authority.

(6) A licensing authority may, at its discretion, compare the authorized scope of practice in the state, or states, where the applicant currently holds licensure to the authorized scope of practice in Idaho. If such licensing authority determines that the authorized scope of practice in Idaho is broader than the scope of practice authorized in the state, or states, where

the applicant currently holds licensure, such licensing authority may, instead of issuing a denial on the basis of the difference in scope of practice, issue a limited license to such applicant pending completion of the additional education, training, and any other requirements determined necessary by the licensing authority. A limited license issued under this section shall restrict the applicant's practice in Idaho to the scope of practice authorized in the state where the applicant holds prior licensure until such time that the applicant satisfies the education, training, or other requirements deemed necessary by the licensing authority for a limited period of time necessary for an applicant to meet the qualifications for a full license.

(7) This section shall not restrict a person who is a member of a profession or occupation covered by an applicable interstate licensure compact or applicable reciprocity agreement from seeking licensure pursuant to this section. In such a situation, a person may apply for universal licensure under this section or may apply for licensure pursuant to the terms of the applicable licensure compact or reciprocity agreement. A licensing authority may promulgate applicable rules if necessary to implement the provisions of this section.

History.

I.C., § 67-9409, as added by 2020, ch. 175, § 1, p. 500.

§ 67-9410. Inquiry regarding the potential impact of a criminal conviction. — (1) An individual who has been convicted of a criminal offense may request, at any time, that a licensing authority opine as to whether the individual's criminal conviction could disqualify the individual from obtaining a license, certificate, registration, permit, or other authorization to practice a profession or occupation issued or conferred by the licensing authority. An individual making such an inquiry shall include details of the individual's criminal record and any payment required by the licensing authority. A licensing authority may charge a fee of no more than twenty-five dollars (\$25.00) for each inquiry made under this section to reimburse the costs it incurs in issuing the opinion.

(2) No later than sixty (60) days or at the next regular meeting after receiving an inquiry under this section, the licensing authority shall inform the individual whether, based on the criminal record information submitted, the individual is disqualified from receiving or holding the license about which the individual inquired.

(3) A licensing authority shall not be bound by an opinion issued under this section if it later determines that the facts and circumstances submitted in the individual's inquiry were not complete and accurate, that the individual's criminal background is different than described in the inquiry, that a subsequent criminal offense or other relevant conduct occurred after the inquiry was submitted, or that a change in law or regulation requires a different determination.

History.

I.C., § 67-9410, as added by 2020, ch. 175, § 1, p. 500.

§ 67-9411. Evaluation of criminal convictions. — (1) A licensing authority shall not deny a license, certificate, registration, permit, or other authorization to practice a profession or occupation to an applicant on the basis of such applicant having a prior conviction of a crime, unless such conviction is currently relevant to the applicant's fitness to engage in such profession or occupation as determined by the licensing authority. The licensing authority shall make its determination based on consideration of the following factors:

(a) The nature and seriousness of the crime for which the individual was convicted; (b) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the occupation; (c) The passage of time since the commission of the crime; (d) Any evidence of rehabilitation or treatment undertaken by the individual; and (e) Any other relevant factor.

(2) A licensing authority shall not deny a license, certificate, registration, permit, or other authorization to practice a profession or occupation to an applicant on the basis of vague or generic terminology related to a criminal conviction, including but not limited to “moral turpitude” or “moral character.” Where such terms appear in code or rule with respect to a criminal conviction, a licensing authority shall conduct a relevancy evaluation pursuant to subsection (1) of this section.

History.

I.C., § 67-9411, as added by 2020, ch. 175, § 1, p. 500.

Chapter 95
COMPENSATORY MITIGATION FOR IMPACTS TO
WETLANDS

Sec.

67-9501. Legislative findings and purpose.

67-9502. Definitions.

67-9503. Limitations.

STATUTORY NOTES

Compiler's Notes.

S.L. 2019, Chapter 206, S.L. 2019, Chapter 296 and S.L. 2019, Chapter 315 each enacted a new chapter 93 in title 67 of the Idaho Code. S.L. 2019, Chapter 315 remained as enacted. S.L. 2019, Chapter 296 was redesignated by the compiler, through the use of brackets, as chapter 94, title 67, Idaho Code. S.L. 2019, Chapter 206 was redesignated by the compiler, through the use of brackets, as chapter 95, title 67, Idaho Code. The redesignation of the provisions enacted by S.L. 2019, Chapter 206 was made permanent by S.L. 2020, ch. 82, § 39.

§ 67-9501. Legislative findings and purpose. — (1) The purpose of this chapter is to promote the availability of all types of compensatory mitigation projects in the state of Idaho, consistent with the provisions of section 404 of the federal clean water act and the regulations promulgated pursuant to it, for the development of projects with unavoidable impacts to wetlands.

(2) In 2008, the United States army corps of engineers and the environmental protection agency issued revised regulations governing compensatory mitigation for impacts to wetlands under section 404 of the federal clean water act, which are contained at [33 CFR parts 325](#) and [332](#) and [40 CFR part 230](#) and referred to as the 2008 compensatory mitigation for losses of aquatic resources rule. These regulations establish equivalent and effective standards for all three (3) types of compensatory mitigation projects: mitigation banks, in-lieu fee mitigation, and permittee-responsible mitigation.

(3) State agencies may review or permit activities associated with applications for United States army corps of engineers section 404 permits and the corps' determinations regarding compensatory mitigation under the mitigation rule.

History.

[I.C., § 67-9301](#), as added by 2019, ch. 206, § 1, p. 632; am. and redesign. 2020, ch. 82, § 39, p. 174.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 82, renumbered this section from § 67-9301.

Federal References.

Section 404 of the federal clean water act, referred to in this section, is codified as [33 USCS § 1344](#).

§ 67-9502. Definitions. — As used in this chapter:

(1) “Compensatory mitigation” means the restoration, re-establishment or rehabilitation, establishment or creation, enhancement, and in certain circumstances preservation of aquatic resources for the purpose of offsetting unavoidable adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

(2) “Compensatory mitigation project” means compensatory mitigation implemented by the permittee as a requirement of a corps of engineers section 404 wetland permit, i.e., permittee-responsible mitigation, or by a mitigation bank, or an in-lieu fee program.

(3) “Impact” or “impacts” means adverse effects.

(4) “Mitigation rule” or “2008 mitigation rule” means the federal regulations promulgated by the United States army corps of engineers and the environmental protection agency, on April 28, 2008, pursuant to the federal clean water act, contained at [33 CFR parts 325 and 332](#) and [40 CFR part 230](#), and known as the 2008 compensatory mitigation for losses of aquatic resources rule.

(5) “Permittee” means any person making application for a federal clean water act section 404 permit from the United States army corps of engineers.

(6) “Person” means any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character.

(7) “State agency” means each state board, commission, department or officer, but does not include the legislative or judicial branches, executive officers listed in [section 1, article IV, of the constitution](#) of the state of Idaho, in the exercise of powers derived directly and exclusively from the constitution, the state militia, or the state board of correction.

History.

[I.C., § 67-9302](#), as added by 2019, ch. 206, § 1, p. 632; am. and redesign. 2020, ch. 82, § 39, p. 174.

STATUTORY NOTES

Cross References.

State board of corrections, § 20-201A.

State militia, § 46-101 et seq.

Amendments.

The 2020 amendment, by ch. 82, renumbered this section from § 67-9302.

Compiler's Notes.

For additional information on the federal clean water act section 404 permit process, referred to in subsection (5), see *<https://www.epa.gov/cwa-404/permit-program-under-cwa-section-404>*.

§ 67-9503. Limitations. — (1) No state agency, officer, or employee shall, as part of any action related to issuance of a federal clean water act section 404 permit, require mitigation for impacts to wetlands that is more stringent than federal compensatory mitigation requirements for impacts to wetlands under section 404 and the 2008 mitigation rule.

(2) The appropriate state agencies may assist the permittee as needed to meet the requirements of the 2008 mitigation rule, including identification of any compensatory mitigation project, when such mitigation is required by the United States army corps of engineers under the mitigation rule. No state agency shall mandate the type of compensatory mitigation project to be proposed to the United States army corps of engineers by a permittee, nor shall any state approval be unreasonably withheld from a permittee because of the type of compensatory mitigation project proposed.

(3) Individual federal clean water act section 404 permit applications and the associated draft section 401 certifications shall be timely posted on the department of environmental quality website.

(4) The provisions of this chapter shall not apply to or modify the provisions of chapter 38, title 42, Idaho Code, regarding the alteration of channels of streams.

History.

I.C., § 67-9303, as added by 2019, ch. 206, § 1, p. 632; am. and redesign. 2020, ch. 82, § 39, p. 174.

STATUTORY NOTES

Amendments.

The 2020 amendment, by ch. 82, renumbered this section from § 67-9303.

Federal References.

Section 404 of the federal clean water act, referred to in this section, is codified as **33 USCS § 1344**.

Section 401 of the federal clean water act, referred to in subsection (3), is codified as **33 USCS § 1341**.

Chapter 96

DAYLIGHT SAVING TIME

Sec.

67-9601. Daylight saving time.

§ 67-9601. Daylight saving time. — At such time as the state of Washington makes daylight saving time the permanent time of the state and all of its political subdivisions, those areas of the state of Idaho that are in the Pacific time zone shall also make daylight saving time the permanent time of those areas of the state of Idaho and all of those political subdivisions located within those areas.

History.

I.C., § 67-9601, as added by 2020, ch. 145, § 1, p. 447.

Table of Contents

Prefatory Material	2
Title Page	2
Copyright Page	4
Terms of Use	5
User's Guide	7
Adjournment Dates of Sessions of Legislature	8
Title 67 STATE GOVERNMENT AND STATE AFFAIRS	12
Chapter 1 SEAT OF GOVERNMENT	14
§ 67-101. Location.	16
§ 67-102. Short title.	17
§ 67-103. Emergency temporary location of government — Declaration by governor.	18
§ 67-104. Validity of acts performed at emergency temporary location.	19
§ 67-105. Emergency temporary location of local governments.	20
§ 67-106. Powers of officers of political subdivisions at emergency temporary location — Validity of acts.	21
§ 67-107. Act supreme and controlling.	22
Chapter 2 LEGISLATIVE DISTRICTS	23
§ 67-201. Legislative apportionment. [Repealed.]	25
§ 67-202. Legislative districts — Senators elected — Representatives elected. [Repealed.]	26
§ 67-202A. Legislative districts — Senators elected — Representatives elected. [Repealed.]	27
§ 67-203. Election of representatives. [Repealed.]	28
§ 67-204. Duty of secretary of state — Apportionment of new counties.	29

§ 67-205. Unassigned precincts — Assignment by county commissioners.	30
Chapter 3 STATE OFFICERS IN GENERAL	31
§ 67-301. Classification of officers.	33
§ 67-302. Commencement of term of office.	34
§ 67-303. Holding office after expiration of term.	35
Chapter 4 LEGISLATURE	37
§ 67-401. Constitution of legislature.	42
§ 67-402. Terms of members.	43
§ 67-403. Certificates of election.	44
§ 67-404. Sessions of legislature.	45
§ 67-404a. Organization of house of representatives and senate.	46
§ 67-404b. Rules.	48
§ 67-404c. Officers and standing committees.	49
§ 67-404d. Organization of second and extraordinary sessions.	50
§ 67-404e. Pending business.	51
§ 67-405. Administering of oaths to members and officers — Oaths to witnesses before committees.	52
§ 67-406. Compensation and mileage of members of legislature.	53
§ 67-406a. Citizens' committee on legislative compensation — Members — Appointment — Terms — Election of chairman.	54
§ 67-406b. Compensation and expenses.	55
§ 67-406c. Secretarial and other assistance. [Repealed.]	57
§ 67-407. Attendance of witness — Subpoena.	58
§ 67-408. Attendance of witnesses — Service of subpoenas.	60
§ 67-409. Attendance of witnesses — Refusal to obey subpoena a contempt.	61
§ 67-410. Witnesses — Compelling attendance.	62
§ 67-411. Witnesses — Self-criminating testimony may be	63

exacted.	
§ 67-411A. Taking and recording testimony under oath.	64
§ 67-412. Designating qualified substitute when legislator temporarily unable to perform duties.	65
§ 67-412A. Compensation of legislators when not in session. [Repealed.]	66
§ 67-413. Short title.	67
§ 67-414. Declaration of policy.	68
§ 67-415. Definitions.	69
§ 67-416. Designation of emergency interim successors to legislators.	70
§ 67-417. Status, qualifications and term of emergency interim successors.	71
§ 67-418. Contingent method of designating emergency interim successors.	72
§ 67-419. Recording and publication.	73
§ 67-420. Oath of emergency interim successors.	74
§ 67-421. Duty of emergency interim successors.	75
§ 67-422. Convening of legislature in event of attack.	76
§ 67-423. Assumption of powers and duties of legislator by emergency interim successor.	77
§ 67-423A. Assumption of powers and duties of legislator by emergency interim successor.	78
§ 67-424. Privileges, immunities and compensation of emergency interim successors.	79
§ 67-425. Quorum and vote requirements.	80
§ 67-426. Termination of operation of provisions of this act.	81
§ 67-427. Legislative council created — Members — Terms — Vacancy.	82
§ 67-428. Officers of council — Committees — Director of legislative services.	84
§ 67-429. Powers and duties.	86
§ 67-429A. State-tribal gaming compacts.	90

§ 67-429B. Authorized tribal video gaming machines.	94
§ 67-429C. Amendment of state-tribal gaming compacts.	96
§ 67-429D. Audit of legislative department.	99
§ 67-430. Meetings — Quorum — Notice — Report to legislature.	100
§ 67-431. Compensation and expenses.	101
§ 67-432. Joint finance-appropriations committee — Creation — Members.	102
§ 67-433. Officers — Adoption of rules of procedure — Subcommittees — Meetings.	103
§ 67-434. Per diem allowance and expenses. [Repealed.]	104
§ 67-435. Powers and duties.	105
§ 67-436. Vouchers for expenses. [Repealed.]	108
§ 67-437. Departments, agencies, and institutions to submit information.	109
§ 67-438. Inquisitorial authority.	110
§ 67-439. Enforcement of subpoenas.	111
§ 67-440. Fees and mileage of witnesses.	112
§ 67-441 — 67-450. Legislative auditor — Term — Staff — Duties — Authority — Report to legislature and governor. [Repealed.]	113
§ 67-450A. Charges for audit.	115
§ 67-450B. Independent financial audits of local governmental entities — Filing requirements.	117
§ 67-450C. Independent financial audits of affiliated organizations to state governmental agencies or entities — Filing requirements.	120
§ 67-450D. Independent financial audits — Designated entities.	123
§ 67-450E. Local governing entities central registry — Reporting information required — Penalties for failure to report.	128
§ 67-451. Legislative account created — Duties of controller — Disbursements from account — Report of disbursements.	133

§ 67-451A. Legislative legal defense fund created.	137
§ 67-452. Membership in Pacific Fisheries Legislative Task Force.	138
§ 67-453. Statements regarding proposed constitutional amendments.	140
§ 67-454. Subcommittees for review of administrative rules — Meetings regarding rules.	143
§ 67-455. Governor's housing committee — Governor's residence fund.	145
§ 67-455A. Committee may acquire and dispose of property.	147
§ 67-456. Special committee on criminal justice reinvestment oversight.	150
§ 67-457. Joint legislative oversight committee — Creation.	153
§ 67-458. Definitions.	155
§ 67-459. Term of membership and organization of committee.	156
§ 67-460. Powers of committee.	157
§ 67-461. Conduct of and issuance of performance evaluation reports.	159
§ 67-462. Recording testimony under oath.	164
§ 67-463. Assistance.	165
§ 67-464. Quorum.	166
§ 67-465. Special oversight committee on state funded substance abuse treatment. [Null and void.]	167
Chapter 5 ENACTMENT AND OPERATION OF LAWS	168
§ 67-501. Endorsement of bills.	170
§ 67-502. Approval of bills.	171
§ 67-503. Passage of bills over veto — Authentication.	172
§ 67-504. Return of bill during adjournment.	173
§ 67-505. Bills not returned.	174
§ 67-506. Designation of laws by chapters.	176
§ 67-507. Proposal of constitutional amendments.	177
§ 67-507a. Statement of meaning, purpose of proposed	178

amendment. [Repealed.]	
§ 67-508. Enrollment and preservation of constitutional amendments.	179
§ 67-509. Publication of legislative journals and session laws — Distribution and report.	180
§ 67-510. Statutes and resolutions — When effective.	183
§ 67-511. Effect of amendment.	185
§ 67-512. Repeal of repealing act.	187
§ 67-513. Repeal of penal law.	188
§ 67-514. Titles to bills.	190
Chapter 6 EMPLOYEES OF LEGISLATURE	191
§ 67-601 — 67-609. Employees of senate and house — Duties — Elections — Removal. [Repealed.]	193
§ 67-610. Control of employees of the legislature.	194
Chapter 7 LEGISLATIVE SERVICES OFFICE	195
§ 67-701. Legislative services office.	197
§ 67-702. Audit function of legislative services office.	199
§ 67-703. Budget and policy analysis — Function of legislative services office.	201
§ 67-704. Research and legislation — Function of legislative services office.	204
Chapter 8 EXECUTIVE AND ADMINISTRATIVE OFFICERS — GOVERNOR AND LIEUTENANT-GOVERNOR	206
§ 67-801. State executive officers enumerated.	210
§ 67-802. Office of governor — Duties of governor.	211
§ 67-803. Transmission of list of appointments.	216
§ 67-804. Records of governor's office.	217
§ 67-805. Acting governor to perform same duties — Compensation of president pro tempore of the senate or speaker of the house of representatives when acting as governor.	218
§ 67-805A. Succession to office of governor.	219
§ 67-806. Coordination of programs relating to the Idaho	220

national engineering laboratory. [Repealed.]	
§ 67-806A. [Amended and Redesignated.]	221
§ 67-807. Agreement for rail passenger service application.	222
§ 67-808. Governor authorizing housing accommodation construction.	223
§ 67-808a. Purchase of furnishings and accessories for governor's residence authorized. [Repealed.]	224
§ 67-808b. Maintenance and upkeep of governor's residence. [Repealed.]	225
§ 67-808c. Governor to occupy governor's residence.	226
§ 67-808d. Governor's expense allowance.	227
§ 67-809. Duties of lieutenant governor — Actual and necessary expenses — Compensation of senate president pro tempore when acting as lieutenant governor.	228
§ 67-810. Employees.	231
§ 67-811. Display of governors' pictures.	232
§ 67-812. Additions to exhibit — Cost.	233
§ 67-813. Establishment of governor-elect transitional fund.	234
§ 67-814. Certification of election of governor-elect by secretary of state.	235
§ 67-815. Facilities to be furnished by director of the budget.	236
§ 67-816. Time during which fund is available to governor-elect.	237
§ 67-817. Incumbent governor, when governor-elect, prohibited from using fund.	238
§ 67-818. Coordination of policy and programs related to threatened species and endangered species in Idaho.	239
§ 67-819. Funding — Account created.	243
§ 67-820. Flags flown at half-staff — Death in line of duty for police, firefighters, paramedics or EMTs.	244
§ 67-821. Coordination of policy and programs related to drug and substance abuse.	246
§ 67-822. [Reserved.]	248

§ 67-823. Coordination of policy and programs related to science, technology, engineering and math education in Idaho.	248
§ 67-824. STEM education fund.	254
§ 67-825. STEM action center advisory board — Meetings — Honorarium and expenses — Organization.	255
§ 67-826. Idaho roadless rule implementation commission.	256
§ 67-827. Coordination of policy and programs — Information technology services and cybersecurity.	259
§ 67-827A. Powers and duties.	260
§ 67-828. Office of information technology services may charge and receive payment for certain services to units of state government — Appropriation.	263
§ 67-829. Advance payments and interaccount transactions.	264
§ 67-830. Declaration of purpose.	265
§ 67-831. Definitions.	266
§ 67-832. Idaho technology authority — Composition — Appointment and term of office — Reimbursement — Contracting for necessary services.	267
§ 67-833. General powers and duties of the authority.	269
§ 67-834. Definitions.	271
§ 67-835. Integrated property records system — Transfer of responsibility.	272
§ 67-836. Agencies to provide records and data.	273
§ 67-837. Responsibility for quality.	274
Chapter 9 SECRETARY OF STATE	275
§ 67-901. Custody of records.	277
§ 67-902. Custodian of printed bills and amendments introduced in both houses.	279
§ 67-903. Duties of secretary of state.	280
§ 67-904. Joint publishing committee — Publication and distribution of session laws. [Repealed.]	282
§ 67-905. Report of joint publishing committee. [Repealed.]	283
§ 67-906. Electronic filing system — Requirements — Rules.	284

§ 67-907. Books distributed to officers — Property of state. [Repealed.]	286
§ 67-908. Expenses of distribution — Audit and payment. [Repealed.]	287
§ 67-909. Distribution of statutes to members of legislature.	288
§ 67-910. Fees of secretary of state.	289
§ 67-911. Fee for filing articles of nonprofit corporations. [Repealed.]	292
§ 67-912. Official bond.	293
§ 67-913. Proposed constitutional amendment.	294
§ 67-914. Records infrequently used having official value — Removal.	295
§ 67-915. Idaho Blue Book.	296
§ 67-916. Democracy fund.	297
Chapter 10 STATE CONTROLLER	299
§ 67-1001. Duties of controller.	302
§ 67-1001A. Definitions.	308
§ 67-1002. Prescribing forms or requirements — Penalty for dereliction.	310
§ 67-1003. Appropriation necessary to authorize warrant.	312
§ 67-1004. Certified copies of documents as evidence.	315
§ 67-1005. Official bond.	317
§ 67-1006. Appointment of deputy.	318
§ 67-1007. State officers and custodians of state funds — Examination.	319
§ 67-1008. State controller to report delinquent collectors.	321
§ 67-1009. [Amended and Redesignated.]	322
§ 67-1010. [Amended and Redesignated.]	323
§ 67-1011. [Amended and Redesignated.]	324
§ 67-1012. [Amended and Redesignated.]	325
§ 67-1013. [Amended and Redesignated.]	326
§ 67-1014. [Amended and Redesignated.]	327
§ 67-1015. [Amended and Redesignated.]	328

§ 67-1016. [Amended and Redesignated.]	329
§ 67-1017. [Amended and Redesignated.]	330
§ 67-1018. [Amended and Redesignated.]	331
§ 67-1019, 67-1020. Employment of experts — Appropriation for expenses. [Repealed.]	332
§ 67-1021. Authority to install accounting and reporting system for state.	333
§ 67-1021A. Business information infrastructure project.	335
§ 67-1021B. Business information infrastructure governance.	336
§ 67-1021C. Business information infrastructure fund.	337
§ 67-1022. Warrants, how drawn — Lost warrants.	338
§ 67-1023. Claims against the state.	340
§ 67-1024. Regulating claims requiring payment in advance.	343
§ 67-1025. Account of endowment funds, how kept.	345
§ 67-1026. Offsetting obligations and making necessary entries.	346
§ 67-1027. Authority to recognize assignments of obligations owing by state.	348
§ 67-1028. [Amended and Redesignated.]	350
§ 67-1029. [Amended and Redesignated.]	351
§ 67-1030. [Amended and Redesignated.]	352
§ 67-1031. Funds created by regents of University of Idaho and state board of education — State controller to keep records.	353
§ 67-1032. [Amended and Redesignated.]	355
§ 67-1033. Annual report to governor — Contents. [Repealed.]	356
§ 67-1034. [Amended and Redesignated.]	357
§ 67-1035. [Amended and Redesignated.]	358
§ 67-1036. Administration of accounting system. [Repealed.]	359
§ 67-1037—67-1040. [Reserved.]	360
§ 67-1041. Vouchers and accounts preserved.	360
§ 67-1042. Inspection of controller's books by legislature.	362

§ 67-1043—67-1050. [Reserved.]	363
§ 67-1051. Proceedings against defaulters.	363
§ 67-1052. Refusal to make returns and exhibits — Penalty.	365
§ 67-1053. Obstructing or misleading state controller — Penalty.	367
§ 67-1054. State treasurer a defaulter — Report to governor — Removal from office.	369
§ 67-1055. County treasurer a defaulter — Report to county commissioners — Removal from office.	371
§ 67-1056. Report of examination to governor — Action against delinquent official.	373
§ 67-1057—67-1080. [Reserved.]	375
§ 67-1081. Submission of annual financial statement to state controller by all taxing units of government — Policies.	375
§ 67-1082. Financial statement — Form.	377
§ 67-1083. Failure to submit financial statement — Penalty.	378
§ 67-1084. Duties of officers to assist state controller.	380
Chapter 11 CLASSIFICATION AND REPORTING OF RECEIPTS AND WARRANT DISBURSEMENTS	382
§ 67-1101. Uniform classification of receipts and expenditures — Duty of state controller.	384
§ 67-1102. Receipts and disbursements — Classification — Tabulation by calendar months.	386
§ 67-1103. Certificates and claim vouchers to contain data essential to classification.	387
§ 67-1104. Annual reports.	388
§ 67-1105, 67-1106. Report of receipts, disbursements — Construction of months January, December. [Repealed.]	390
Chapter 12 STATE TREASURER	391
§ 67-1201. Duties of treasurer.	394
§ 67-1202. Funds of state board of land commissioners.	399
§ 67-1203. Establishment of a state treasurer investment advisory board — Members — Qualifications.	401

§ 67-1203A. Board — Appointment of members — Term — Removal — Vacancies — Organization — Quorum — Meetings — Compensation.	402
§ 67-1203B. Recommendation of the types and kinds of investments.	403
§ 67-1204. Money to be kept in office — Penalty.	404
§ 67-1205. General fund defined — Payment of interest.	406
§ 67-1206. Transfers of balances in funds.	408
§ 67-1207. Temporary diversion of revenues to cease on accomplishment of purpose.	409
§ 67-1208. Apportionment of forest reserve funds. [Repealed.]	410
§ 67-1209. Suspense account.	411
§ 67-1210. Investment of idle moneys.	412
§ 67-1210A. Additional allowable investments by the state treasurer.	418
§ 67-1210B. Ability to continue to invest.	420
§ 67-1211. Payment of warrants.	421
§ 67-1212. Unpaid warrants — Interest — Record.	422
§ 67-1213. Refusal to pay warrants — Penalty — Cancellation.	426
§ 67-1214. Delivery of bonds sold outside state.	427
§ 67-1215. Notice of call of warrants.	428
§ 67-1216. Inspection of treasurer's office.	429
§ 67-1217. Treasurer's office — Inspection by governor.	430
§ 67-1218. Seal of office — Certified copies of documents as evidence.	431
§ 67-1219. Deputy state treasurer and additional deputies and employees — Appointment and bond.	432
§ 67-1220. Official bond.	433
§ 67-1221. Fiscal agency in New York City.	434
§ 67-1222. Reports to be filed — Bond issues. [Repealed.]	436
§ 67-1223. Idaho commemorative silver medallions issued by	437

the state treasurer.	
§ 67-1224. Idaho credit rating enhancement committee — Membership — Compensation — Quorum — Meetings — Personnel.	440
§ 67-1225. Powers and duties of credit rating enhancement committee.	442
§ 67-1226. Local government investment pool.	443
§ 67-1227. Investment at request of state agency.	444
§ 67-1228. Treasurer's administrative fund.	445
§ 67-1229. Interaccount transactions.	446
Chapter 13 CUSTODIAN FOR MONEY AND SECURITIES HELD BY STATE	447
§ 67-1301. State treasurer appointed as custodian.	449
§ 67-1302. Delivery of money and securities to state treasurer — Receipts.	450
§ 67-1303. Duties of state treasurer connected with custody.	451
§ 67-1304. Custodians of federally insured deposits.	452
Chapter 14 ATTORNEY GENERAL	453
§ 67-1401. Duties of attorney general.	455
§ 67-1402. Official bond.	466
§ 67-1403. Legal services for state to be furnished by attorney general. [Vetoed.]	467
§ 67-1404. [Reserved.]	468
§ 67-1405. Duties of the attorney general regarding child sexual abuse reports.	468
§ 67-1406. Employment of attorneys restricted — Exemptions.	470
§ 67-1407. Fees assessed for services.	472
§ 67-1408. Billing of state entities for legal services.	473
§ 67-1409. Contracts for legal services.	474
§ 67-1410. Internet crimes against children unit.	476
§ 67-1411. Internet crimes against children fund.	478
§ 67-1412. Definitions.	479

§ 67-1413. Sobriety and drug monitoring program created.	482
§ 67-1414. Rules — Testing fees.	484
§ 67-1415. Authority of court and other entities to order participation in sobriety and drug monitoring program.	486
§ 67-1416. Collection, distribution and use of testing fees.	488
Chapter 15 STATE SUPERINTENDENT OF PUBLIC INSTRUCTION	489
§ 67-1501. Election, qualifications, oath and bond.	491
§ 67-1502. Office — Duties — Seal.	492
§ 67-1503. Meetings with local superintendents.	493
§ 67-1504. Superintendent as member of state board of education — Duties.	494
§ 67-1505. Printing of supplies and laws. [Repealed.]	495
§ 67-1506. Financial report on schools — Recommendations.	496
§ 67-1507. Inspection of schools — Correspondence with other states.	497
§ 67-1508. Expenses of state superintendent, how paid.	498
§ 67-1509. Administrative rules.	499
Chapter 16 CAPITOL BUILDING AND GROUNDS	500
§ 67-1601. Statement of findings and purpose.	502
§ 67-1602. Idaho state capitol — Allocation and control of space.	504
§ 67-1603. Idaho state capitol — Exterior — Grounds — Systems.	507
§ 67-1604. Idaho state capitol — Access and use.	508
§ 67-1605. Law enforcement and security.	509
§ 67-1606. Idaho state capitol commission — Creation and appointment of members.	510
§ 67-1607. Organization of the commission.	512
§ 67-1608. Powers and duties of the commission.	513
§ 67-1609. Architect of the capitol building. [Repealed.]	516
§ 67-1610. Capitol permanent endowment fund.	517
§ 67-1610A. Capitol maintenance reserve fund.	519

§ 67-1611. Capitol commission operating fund.	520
§ 67-1612. Capitol tours program.	522
§ 67-1613. Capitol mall and other state property and facilities — Camping prohibited.	523
§ 67-1613A. Disposition of property.	525
§ 67-1614—67-1629. State purchasing agent — Contracts — Prohibitions — Revolving fund for purchase of supplies — Contracts with federal government — Stocks of supplies — Discounts — Car pool system. [Repealed.]	527
Chapter 17 COMMISSIONERS ON UNIFORM LAWS	528
§ 67-1701. Appointment of commissioners — Qualifications — Vacancies.	530
§ 67-1702. Term of office — Disbursements for expenses.	531
§ 67-1703. Meeting and organization.	532
§ 67-1704. Duties of commissioners.	533
Chapter 18 IDAHO MILLENNIUM FUND	534
§ 67-1801. Idaho millennium permanent endowment fund.	536
§ 67-1802. Distribution from the Idaho millennium permanent endowment fund.	538
§ 67-1803. Idaho millennium fund.	540
§ 67-1804. Distribution from the Idaho millennium fund.	542
§ 67-1805. Idaho millennium fund balance limitation.	544
§ 67-1806. Idaho millennium income fund.	546
§ 67-1807. Joint millennium fund committee — Creation and appointment of members.	548
§ 67-1808. Powers and duties of the committee.	550
§ 67-1809. Support and staff for the committee.	552
Chapter 19 STATE PLANNING AND COORDINATION	553
§ 67-1901. Purposes.	555
§ 67-1902. Definitions.	556
§ 67-1903. Strategic planning.	558
§ 67-1904. Performance measurement.	560
§ 67-1905. Training.	563

§ 67-1906—67-1909. State planning board. [Repealed.]	564
§ 67-1910. Division of financial management — Administrator — Appointment.	565
§ 67-1911. Financial management technical development committee. [Repealed.]	566
§ 67-1912. Community affairs functions and responsibilities of division. [Repealed.]	567
§ 67-1913. Funds of division.	568
§ 67-1914. Purpose of act. [Repealed.]	569
§ 67-1915. Duties, responsibilities and authority.	570
§ 67-1916. Federal assistance management — Duties, responsibilities and authority.	571
§ 67-1917. Reports by participating state agencies.	572
§ 67-1918. Financial and accounting responsibilities of the division.	574
§ 67-1919—67-1989. [Reserved.]	576
§ 67-1990. Idaho Centennial Commission. [Null and void.]	576
Chapter 20 STATE BOARD OF EXAMINERS	577
§ 67-2001. Constitution of board.	580
§ 67-2002. Meetings of board — Claims.	582
§ 67-2003. Duties of secretary — Record of claims.	584
§ 67-2004. Regulation of per diem traveling expense allowances.	586
§ 67-2005. Voucher forms.	587
§ 67-2006. Travel expense — Vouchers.	589
§ 67-2007. Standard travel pay and allowances.	590
§ 67-2008. Determination of rate of allowance.	591
§ 67-2008A. Determination of rates of allowance — Foreign travel.	593
§ 67-2009. Travel expense — Certificate and verification of claims. [Repealed.]	594
§ 67-2010. Supplies — Vouchers.	595
§ 67-2011. Services — Vouchers for.	596

§ 67-2012. Payroll — Vouchers.	597
§ 67-2013. Filing, examination and correction of vouchers.	600
§ 67-2014. Certification of claim by controller.	602
§ 67-2015. Regulations for proof of claims.	605
§ 67-2016. State controller's civil liability.	606
§ 67-2017. Criminal liability for false certificate.	608
§ 67-2018. Audit of claims.	609
§ 67-2019. Rotary expense account — Authorization.	615
§ 67-2020. Rotary expense account — Allowance.	617
§ 67-2021. Rotary expense account — How drawn upon.	619
§ 67-2022. Rotary expense account — Allowance of items.	621
§ 67-2023. Controller drawing warrant for disapproved claims — Liability.	623
§ 67-2024. Board may adopt policies and procedures.	625
§ 67-2024A. Authorization for disposal of state surplus property.	626
§ 67-2025. Moneys to be paid over to state treasurer at monthly intervals — Bursar of state educational institutions may act as treasurer of school organizations — Deposit of moneys — Liability of banks and officers.	627
§ 67-2026. Taxes, fees and other amounts to be paid by electronic funds transfer — Exception.	630
§ 67-2026A. Failure to use electronic funds transfer.	632
§ 67-2027. Board to provide for audits. [Repealed.]	633
§ 67-2028. Law enforcement death benefits. [Repealed.]	634
§ 67-2029—67-2031. Public records. [Repealed.]	635
Chapter 21 OTHER OFFICERS AND BOARDS	636
§ 67-2101. General reference to other officers and boards.	638
Chapter 22 FISCAL YEAR	639
§ 67-2201. Fiscal year.	641
§ 67-2202. Date for closing accounts.	642
§ 67-2203. Period covered by annual and biennial reports.	643
Chapter 23 MISCELLANEOUS PROVISIONS	644

§ 67-2301. Exemption from payment of fees.	648
§ 67-2302. Prompt payment for goods and services.	650
§ 67-2303. Display of POW/MIA flag.	654
§ 67-2303A. Flags — Proper protocol.	655
§ 67-2304—67-2307. Construction of public buildings, works — Sale of services, materials, blueprints. [Repealed.]	656
§ 67-2308. Conveyance of land owned by county to state when state buildings located thereon — Effect of deed.	657
§ 67-2309. Written plans and specifications for work to be made by officials — Availability.	658
§ 67-2310. Subcontractors to be listed on bid of general contractor — Exceptions.	660
§ 67-2311. Purpose of act.	664
§ 67-2312. Public buildings subject to safety inspection.	665
§ 67-2313. Inspections.	667
§ 67-2314. Report of inspection.	668
§ 67-2315. Recommendations. [Repealed.]	669
§ 67-2316. Duty of agency in control of buildings.	670
§ 67-2317. Hearing and decision of disputed issues.	671
§ 67-2318. Emergency expenditures.	672
§ 67-2319. Purchasing products of rehabilitation facilities.	674
§ 67-2320. Professional service contracts with design professionals, construction managers and professional land surveyors.	676
§ 67-2321. Change of name of taxing district — Hearing — Election — Exceptions.	679
§ 67-2322. Transfer of property by local unit of government to other government body authorized.	681
§ 67-2323. Written agreement before transfer — Publication of notice.	682
§ 67-2324. Two-thirds vote required for approval.	684
§ 67-2325. Power to convey under other laws not limited.	685
§ 67-2326. Joint action by public agencies — Purpose.	686

§ 67-2327. Definitions.	688
§ 67-2328. Joint exercise of powers.	689
§ 67-2329. Agreement filed with secretary of state — Constitutionality — Enforceable in courts — Reciprocity.	693
§ 67-2330. Approval of appropriate state officer or agency.	694
§ 67-2331. Funds — Property — Personnel — Services.	695
§ 67-2332. Interagency contracts.	696
§ 67-2333. Powers of agencies not increased or diminished.	697
§ 67-2334. “Volunteer” defined.	698
§ 67-2335. Acceptance of volunteers — Expenses.	699
§ 67-2336. Qualifications of volunteers.	700
§ 67-2337. Extraterritorial authority of peace officers.	701
§ 67-2338. Extraterritorial benefits of public officers.	705
§ 67-2339. Mutual aid by state agencies.	706
§ 67-2340. Regulation of auxiliary containers.	707
§ 67-2341. Open public meetings — Definitions. [Repealed.]	709
§ 67-2342. Governing bodies — Requirement for open public meetings. [Repealed.]	710
§ 67-2343. Notice of meetings — Agendas. [Repealed.]	711
§ 67-2344. Written minutes of meetings. [Repealed.]	712
§ 67-2345. Executive sessions — When authorized. [Repealed.]	713
§ 67-2345A. [Redesignated.]	714
§ 67-2346. Open legislative meetings required. [Repealed.]	715
§ 67-2347. Violations. [Repealed.]	716
§ 67-2348. Preference for Idaho domiciled contractors on public works.	717
§ 67-2349. Preference for Idaho suppliers and recycled paper products for purchases.	718
§ 67-2350. Snow removal responsibilities.	720
§ 67-2351. Short title.	721
§ 67-2352. Definitions.	722

§ 67-2353. City or county request for advice.	723
§ 67-2354. Department responsibilities.	724
§ 67-2355. Consideration of application — Local regulation.	725
§ 67-2356,67-2357. Electronic signature and filing act — Public agency rules — Option of agency. [Repealed.]	727
§ 67-2358. Collection of public debts — Fees.	728
Chapter 24 CIVIL STATE DEPARTMENTS — ORGANIZATION	730
§ 67-2401. Gubernatorial responsibility — Administrative departments created.	732
§ 67-2402. Structure of the executive branch of Idaho state government.	734
§ 67-2403. Heads of departments.	738
§ 67-2404. Appointment of department heads.	740
§ 67-2405. Powers and duties of department heads.	741
§ 67-2406. Directors of departments enumerated.	744
§ 67-2407, 67-2408. Special qualifications required of certain officers — Powers of agricultural advisers. [Repealed.]	746
§ 67-2409. Salaries. [Repealed.]	747
§ 67-2410. No compensation for advisory boards.	748
§ 67-2411, 67-2412. Time devoted to duties — Appointment, removal of officers. [Repealed.]	749
§ 67-2413. Bonds, oaths of commissioners. [Repealed.]	750
§ 67-2414. Department of charitable institutions abolished — Transfer of powers. [Repealed.]	751
§ 67-2415. Commissioner, department of public investments abolished — Transfer of powers. [Repealed.]	752
§ 67-2416. Department of social and rehabilitation services substituted for department of public assistance. [Repealed.]	753
§ 67-2417. Department of environmental and community services substituted for department of social and rehabilitation services, department of environmental protection and health, state youth training center. [Repealed.]	754
Chapter 25 CIVIL STATE DEPARTMENTS — CONDUCT	755

§ 67-2501. Administrative rules prescribed by director.	757
§ 67-2502. Offices — Branch offices.	758
§ 67-2503. Seal.	759
§ 67-2504. Employees.	760
§ 67-2505. Bonds of employees. [Repealed.]	761
§ 67-2506. Hours for service. [Repealed.]	762
§ 67-2507. Vacation leave. [Repealed.]	763
§ 67-2508. Compensation for public service.	764
§ 67-2509. Reports. [Repealed.]	766
§ 67-2510. Cooperation of departments.	767
§ 67-2511. Gross receipts payable into treasury — Appropriation and warrant of controller prerequisites to expenditure of state funds.	768
§ 67-2512. Requisition to make funds available. [Repealed.]	769
§ 67-2513. Departments successors to abolished offices.	770
§ 67-2514—67-2516. Biennial financial statement. [Repealed.]	772
Chapter 26 DEPARTMENT OF SELF-GOVERNING AGENCIES	773
§ 67-2601. Department created — Organization.	776
§ 67-2601A. Division of building safety.	785
§ 67-2602. Division of occupational and professional licenses.	792
§ 67-2602A. License fees — Military exemption.	795
§ 67-2603. Division administrator — Expenses.	797
§ 67-2604. Authority granted by written agreement.	799
§ 67-2605. Occupational licenses account created — Disposition of fees.	802
§ 67-2606. Occupational licenses account — Payment of expenses of division from — Manner.	803
§ 67-2607. Occupational licenses fund — Continuing appropriation — Annual transfer of surplus. [Repealed.]	805
§ 67-2608. Division administrator to cooperate with other agencies.	806

§ 67-2609. Registration of occupations.	808
§ 67-2610. Registration of occupations — Reexaminations.	811
§ 67-2611. Issuance of licenses — Issuance of duplicate — Fee.	812
§ 67-2612. Recording of licenses.	813
§ 67-2613. Limited application of this chapter.	814
§ 67-2614. Renewal or reinstatement of licenses.	815
§ 67-2615. Reexamination and payment of certificate fees.	819
§ 67-2616. Clarification of definitions.	820
§ 67-2617. Payment of reexamination and certificate fees. [Repealed.]	821
§ 67-2618. Attorney general to advise and represent. [Repealed.]	822
§ 67-2619. Clarification of definitions. [Repealed.]	823
§ 67-2620. Military education training and service — Qualifications for licensure, certification or registration. [Repealed.]	824
Chapter 27 DEPARTMENT OF FINANCE	825
§ 67-2701. Department of finance — Creation — Director — Organization — Powers and duties.	829
§ 67-2702. Fees — Fines — Miscellaneous charges.	831
§ 67-2703, 67-2704. Bureau of public accounts. [Repealed.]	834
§ 67-2705. Inventory of state property. [Repealed.]	835
§ 67-2706—67-2708. Bookkeeping — Report on bondsmen — Examination of accounts. [Repealed.]	836
§ 67-2709—67-2714. [Amended and Redesignated.]	837
§ 67-2715. Rendering false statements is perjury. [Repealed.]	838
§ 67-2716. [Amended and Redesignated.]	839
§ 67-2717. Power to issue subpoenas and administer oaths — Obstructing examination — Penalty.	840
§ 67-2718. [Amended and Redesignated.]	841
§ 67-2719. Penalties. [Repealed.]	842
§ 67-2720. Duty of attorney general to aid department.	843

§ 67-2721, 67-2722. [Amended and Redesignated.]	844
§ 67-2723. Expenses of carrying out provisions of state depository law — Audit and payment.	845
§ 67-2724. Officers and persons authorized to make inspections and examinations.	846
§ 67-2725. Banks eligible as depositories.	848
§ 67-2725A. State treasurer prohibited from making deposits in banks or trust companies which have failed to pay all state and local taxes.	849
§ 67-2726. Banks to which officials secretly indebted ineligible.	850
§ 67-2727—67-2736. Securities and bonds. [Repealed.]	852
§ 67-2737. Funds to be deposited.	853
§ 67-2738. Permanent endowment funds temporarily in hands of treasurer.	855
§ 67-2739. Designation of depository — Reporting of capital and surplus.	856
§ 67-2740. Certificate to state treasurer. [Repealed.]	858
§ 67-2741. Excess deposits.	859
§ 67-2742. Withdrawal of moneys from depositories — Time deposits.	861
§ 67-2743. Interest on time deposits.	863
§ 67-2743A. Powers of board. [Repealed.]	865
§ 67-2743B — 67-2743D. Rules and regulations — Compliance — Filing statement of condition. [Repealed.]	866
§ 67-2743E. Disclosure or use of information relating to depositories — Penalty.	867
§ 67-2744. Depositories to render monthly statements.	869
§ 67-2745. Duty of treasurer upon receipt of notice of cancellation.	871
§ 67-2746. Responsibility for loss through insolvency of bank.	873
§ 67-2746A. Deposit for safekeeping — Responsibility.	874

§ 67-2747. Treasurer to make no profit — Penalty.	875
§ 67-2748. Neglect of treasurer a misdemeanor — Penalty.	876
§ 67-2749. Bribery of treasurer a felony — Penalty.	877
§ 67-2750. Short title.	878
§ 67-2751. Definitions.	879
§ 67-2752. Financial fraud illegal.	881
§ 67-2753. Employment or affiliation of certain persons.	883
§ 67-2754. Powers of director.	884
§ 67-2755. Injunctions — Other remedies.	887
§ 67-2756. Private remedies.	890
§ 67-2757. Institution of criminal proceedings.	891
§ 67-2758. Criminal penalties for violations — Limitation of actions.	892
§ 67-2759. Criminal punishment under this act not exclusive.	893
§ 67-2760. Judicial review of orders.	894
§ 67-2761. Administration of act — Rules, forms and orders.	895
§ 67-2762. Administrative public hearings — Exception.	896
§ 67-2763, 67-2764. [Repealed.]	897
Chapter 28 PURCHASING BY POLITICAL SUBDIVISIONS	898
§ 67-2801. Legislative intent.	900
§ 67-2802. Applicability.	901
§ 67-2802A. Discrimination in procurement prohibited.	902
§ 67-2803. Exclusions.	903
§ 67-2804. Waiver.	905
§ 67-2805. Procurement of public works construction.	906
§ 67-2806. Procuring services or personal property.	917
§ 67-2806A. Request for proposal.	923
§ 67-2807. Cooperative purchasing.	925
§ 67-2808. Emergency expenditures and sole source expenditures.	926
§ 67-2809. Legislative intent — Public works — Agreements — Savings — Severability.	929

Chapter 29 IDAHO STATE POLICE	932
§ 67-2901. Idaho state police created — Director — Divisions — Powers and duties — Failure of peace officers to obey orders, misdemeanor — Deputies — Compensation and powers.	935
§ 67-2901A. Authority to conduct safety inspections and compliance reviews of motor carriers — Adoption of rules — Penalty.	943
§ 67-2901B. Inspection of motor carriers — Exemptions — Certification of repair — Compliance review — Penalties.	944
§ 67-2902. Director and deputies — Powers of police officers.	948
§ 67-2903. State police division established. [Repealed.]	949
§ 67-2904. Administrator — Appointment, term, salary.	950
§ 67-2905. Jurisdiction.	951
§ 67-2906. Cooperation and exchange of information.	953
§ 67-2907. Jailors to receive prisoners from Idaho state police.	954
§ 67-2908. Salaries and expenses — Source of payment.	955
§ 67-2909—67-2911. Authority to submit fingerprints — State criminal identification bureau established — Records and statistics — Cooperation in criminal identification. [Repealed.]	957
§ 67-2912. State victim notification fund.	958
§ 67-2913. Search and rescue fund.	960
§ 67-2913A. Snowmobile search and rescue fund — Advisory committee.	963
§ 67-2914. Idaho law enforcement fund established.	965
§ 67-2915. Statistical report of malicious harassment crimes.	967
§ 67-2916. Reports of murders.	968
§ 67-2917. Hazardous waste.	970
§ 67-2918. Penalties.	972
§ 67-2919. Testing and retention of sexual assault evidence kits.	974

§ 67-2920. Blue Alert system.	982
§ 67-2921, 69-2922. Recording of licenses — Payment of reexamination and certificate fees. [Repealed.]	984
§ 67-2923. Commissioner and deputies — Powers of peace officers. [Repealed.]	985
§ 67-2924, 67-2925. Occupational license fund. [Repealed.]	986
§ 67-2926. [Amended and Redesignated.]	987
§ 67-2927. [Amended and Redesignated.]	988
§ 67-2928. [Amended and Redesignated.]	989
§ 67-2929. [Amended and Redesignated.]	990
§ 67-2930. [Amended and Redesignated.]	991
§ 67-2931. [Amended and Redesignated.]	992
Chapter 30 CRIMINAL HISTORY RECORDS AND CRIME INFORMATION	993
§ 67-3001. Definitions.	995
§ 67-3002. Positive identification — Fingerprints required.	998
§ 67-3003. Duties of the department.	999
§ 67-3004. Fingerprinting and identification.	1001
§ 67-3005. Records and reporting — Duties of other criminal justice agencies and the court.	1004
§ 67-3006. Reporting of uniform crime information.	1006
§ 67-3007. Completeness, accuracy and security of criminal history records.	1007
§ 67-3008. Release of criminal history record information.	1009
§ 67-3009. Criminal penalties.	1011
§ 67-3010. Fees authorized.	1012
§ 67-3011. Noncompliance with reporting requirements.	1013
§ 67-3012. National crime prevention and privacy compact.	1014
§ 67-3013. Appointment of compact officer.	1029
§ 67-3014. Expungement for victims of human trafficking.	1030
Chapter 31 DEPARTMENT OF HEALTH AND WELFARE — MISCELLANEOUS PROVISIONS	1034
§ 67-3101—67-3104. Department of public welfare —	1036

Bureau of child hygiene. [Repealed.]	
§ 67-3105. State grants-in-aid.	1037
§ 67-3106. Bureau of industrial hygiene created — Powers and duties. [Repealed.]	1038
§ 67-3107. Compensation and salaries. [Obsolete.]	1039
§ 67-3108—67-3120. Commission on alcoholism. [Repealed.]	1040
Chapter 32 DEPARTMENT OF PUBLIC WORKS	1041
§ 67-3201. Department of public works — Powers and duties. [Repealed.]	1043
§ 67-3202. Power to acquire and dispose of land. [Repealed.]	1044
§ 67-3203, 67-3203a. [Amended and Redesignated.]	1045
§ 67-3204, 67-3205. Capitol building postal system. [Repealed.]	1046
§ 67-3206. Inventory of real property owned or leased by state in Boise. [Repealed.]	1047
Chapter 33 DEPARTMENT OF WATER RESOURCES	1048
§ 67-3301. Powers and duties.	1050
Chapter 34 CIVIL STATE DEPARTMENTS — AMENDMENTS AND REPEALS	1052
§ 67-3401. Offices abolished.	1054
§ 67-3402. Department of commerce and industry abolished — Duties transferred.	1056
§ 67-3403. Department of commerce and industry — Transfer of rights, powers and duties to department of finance.	1057
§ 67-3404. Effect of law on constitutional officers.	1059
§ 67-3405. Validity of law.	1060
Chapter 35 STATE BUDGET	1061
§ 67-3501. Budget function.	1064
§ 67-3501A. Chapter provisions — Administration.	1066
§ 67-3502. Format and preparation of annual budget requests.	1067
§ 67-3503. Preparation and return of estimates. [Repealed.]	1070
§ 67-3504. Duties of administrator of the division.	1071

§ 67-3505. Budget information submitted to governor.	1073
§ 67-3506. Governor to transmit budget document.	1074
§ 67-3507. Executive budget.	1075
§ 67-3508. Expenditure object codes.	1077
§ 67-3509. Time when appropriation available.	1080
§ 67-3510. Expenditure object codes made to conform.	1081
§ 67-3511. Transfer of legislative appropriations.	1082
§ 67-3512. Reduction of legislative appropriations.	1084
§ 67-3512A. Temporary reduction of spending authority.	1085
§ 67-3513. Committees of legislature to consider budget.	1087
§ 67-3513A. Fiscal notes. [Repealed.]	1089
§ 67-3514. Appropriation bills to be prepared by joint finance-appropriations committee.	1090
§ 67-3515. Precedence of budget bills. [Repealed.]	1092
§ 67-3516. Appropriation acts deemed fixed budgets — Rate of expenditure.	1093
§ 67-3517. Requests for spending authority by officials, departments, bureaus and institutions.	1097
§ 67-3518. Investigation of requests by administrator.	1099
§ 67-3519. Employee positions — Procedure for filling.	1100
§ 67-3520. Economic recovery reserve fund. [Repealed.]	1102
§ 67-3521. Encumbering appropriations or excessive expenditures forbidden — Encumbrances to revert — Approval.	1104
§ 67-3522. Supplemental requests for increases in allotments. [Repealed.]	1106
§ 67-3523. Submission of requests for allotments directed. [Repealed.]	1107
§ 67-3524. Equitable distribution of government overhead expense. [Repealed.]	1108
§ 67-3525. Determination of expense attributable to special funds quarterly — Transfer of sums from special funds to general fund. [Repealed.]	1109

§ 67-3526. Disagreement on amounts allowed. [Repealed.]	1110
§ 67-3527. Certification. [Repealed.]	1111
§ 67-3528. Transfer. [Repealed.]	1112
§ 67-3529, 67-3530. Prohibited transfers — Adjustment — Certain funds excluded — Certain funds excluded from application. [Repealed.]	1113
§ 67-3531. Annual statewide indirect cost allocation plan.	1114
§ 67-3532. Technology infrastructure stabilization fund.	1116
Chapter 36 STANDARD APPROPRIATIONS ACT OF 1945	1117
§ 67-3601. Application of act.	1119
§ 67-3602. Payment of salaries and wages.	1120
§ 67-3603. Manner of payment of sums appropriated.	1121
§ 67-3604. Closing accounts by state controller.	1122
§ 67-3605. Appropriated funds available only as allotted.	1124
§ 67-3606. Compensation of state officials, deputies and employees. [Repealed.]	1125
§ 67-3607. Moneys accruing to interest funds.	1126
§ 67-3608. Moneys received by state educational institutions deposited with state treasurer — Exceptions.	1127
§ 67-3609. Moneys from outside sources used in addition to direct appropriation.	1129
§ 67-3610. University of Idaho — Annual audited financial statement.	1130
§ 67-3611. Expenditure of funds from sale of services, rentals or sale of products by state institutions.	1131
§ 67-3612. Exemptions.	1133
§ 67-3613. Limitation on amount of allotments. [Repealed.]	1134
§ 67-3614. Title of act.	1135
Chapter 37 STATE REFUNDING BONDS	1136
§ 67-3701. Issuance and sale authorized. [Repealed.]	1138
§ 67-3702. Signing and authentication of bonds. [Repealed.]	1139
§ 67-3703. Signature of treasurer to bond and coupons. [Repealed.]	1140

§ 67-3704. Annual levy for payment of interest and principal. [Repealed.]	1141
§ 67-3705. Terms of sale. [Repealed.]	1142
Chapter 38 REPLACEMENT BONDS	1143
§ 67-3801. Issuance upon cancellation of outstanding bonds. [Repealed.]	1145
§ 67-3802. Unauthorized issuance unlawful. [Repealed.]	1146
§ 67-3803. Failure to cancel exchanged bonds unlawful. [Repealed.]	1147
§ 67-3804. Violation a felony. [Repealed.]	1148
Chapter 39 FINANCIAL RELIEF OF TAXING DISTRICTS UNDER FEDERAL BANKRUPTCY STATUTE	1149
§ 67-3901. “Taxing district” defined.	1151
§ 67-3902. Exercise of powers.	1153
§ 67-3903. Petition by district.	1154
§ 67-3904. Resolution authorizing filing.	1155
§ 67-3905. Plan of readjustment authorized.	1156
§ 67-3906. Prerequisite to decree.	1157
§ 67-3907. Powers of district to consummate plan of readjustment.	1158
§ 67-3908. Validation.	1161
§ 67-3909. Effect and application.	1162
§ 67-3910. Separability.	1163
Chapter 40 STATE-TRIBAL RELATIONS ACT	1164
§ 67-4001. Definitions.	1166
§ 67-4002. Authority to enter into agreements with tribes.	1167
§ 67-4003. Powers of agencies not diminished.	1169
§ 67-4004. Council on Indian affairs created — Appointment of members.	1170
§ 67-4005. Organization of council.	1171
§ 67-4006. Governments to cooperate.	1172
§ 67-4007. Powers and duties of the council.	1173
Chapter 41 STATE HISTORICAL SOCIETY	1174

§ 67-4101—67-4110. State historical society. [Repealed.]	1177
§ 67-4111. Declaration of policy.	1178
§ 67-4112. Definitions.	1179
§ 67-4113. Historic site designation — Public notice and comment.	1180
§ 67-4114. Purpose — Preservation of historical sites and monuments.	1181
§ 67-4115. Designation.	1182
§ 67-4116. Marking and maintenance.	1183
§ 67-4117. Approval of markers, monuments and signs.	1184
§ 67-4118. Penalty for damage, injury, molestation, or destruction of an archaeological or historical site, or marker.	1185
§ 67-4119. Purpose — Protection of archaeological and vertebrate paleontological sites and resources.	1186
§ 67-4120. Permits for excavation.	1187
§ 67-4121. Regulations — Collections held in trust.	1188
§ 67-4122. Penalties.	1189
§ 67-4123. State historical society — Governed by board of trustees.	1190
§ 67-4124. Board of trustees — Qualifications, appointment and terms of members.	1191
§ 67-4125. Board meetings — Officers — Quorum — Expenses.	1193
§ 67-4126. Powers and duties of board.	1194
§ 67-4127. Director of the society appointed by board — Powers and duties.	1196
§ 67-4127A. State historic preservation officer appointed by the governor.	1197
§ 67-4128. Title to property vested in board.	1198
§ 67-4129. Board empowered to acquire and dispose of property.	1199
§ 67-4129A. Historical society account.	1200
§ 67-4129B. Idaho historic preservation and cultural	1201

enhancement fund.	
§ 67-4129C. Records management services fund.	1202
§ 67-4130. Franklin County Pioneer Relic Hall — Recognition — Administration — Appropriations.	1203
§ 67-4131. Records management services — Rules, guidelines, procedures.	1204
Chapter 42 STATE PARKS	1205
§ 67-4201. Withdrawal of lands for park purposes.	1209
§ 67-4202. Heyburn Park.	1211
§ 67-4203. Heyburn Park — Supervision.	1212
§ 67-4204. Heyburn Park — Granting of concessions.	1213
§ 67-4205. Heyburn Park — General laws applicable.	1214
§ 67-4206. Heyburn Park — Improvements — Finances.	1215
§ 67-4207. Purchase of Spalding Mission site authorized. [Repealed.]	1216
§ 67-4208. Lands set aside for Spalding Park. [Repealed.]	1217
§ 67-4209. Agreement with United States authorized to operate lands adjacent to Walcott Lake and American Falls Reservoir and Cascade Reservoir as recreational areas.	1218
§ 67-4210. Administration of areas by park and recreation board of the department of parks and recreation.	1219
§ 67-4211. Expenditure of funds by board.	1220
§ 67-4212. State parks and recreational trailways listed — Controlled by park and recreation board of the department of parks and recreation.	1221
§ 67-4213. Areas constituting state parks — Exceptions.	1225
§ 67-4214. Farragut State Park — Created — Location.	1226
§ 67-4215. Control and management.	1230
§ 67-4216. Alienation prohibited.	1231
§ 67-4217. Register Rock — Massacre Rock State Park and Historical Monument.	1232
§ 67-4218. Department of parks and recreation created.	1233
§ 67-4219. Intent of legislature.	1234

§ 67-4220. Interagency committee. [Repealed.]	1236
§ 67-4221. Park and recreation board — Members — Appointment — Terms — Honorariums and expenses — Meetings and quorums — Removal of members.	1237
§ 67-4222. Powers and duties of board — Appointment of director — Employees — Merit system — Salaries.	1239
§ 67-4223. Powers of board.	1241
§ 67-4223A. Idaho state parks passport program — Fee.	1248
§ 67-4224. Duty of board to acquire, develop, and maintain land — Transfer of jurisdiction.	1249
§ 67-4225. Park and recreation fund.	1250
§ 67-4226. Division of parks and recreation in department of land abolished — Heyburn Park appropriation transferred.	1251
§ 67-4227. Rights, duties and obligations transferred.	1252
§ 67-4228. Power of board to accept gifts.	1253
§ 67-4229. Idaho Veterans Memorial Park created — Location.	1254
§ 67-4229A. Lucky Peak State Park — Spring Shores dock acquisition.	1256
§ 67-4229B. Harriman state park — Financing improvements.	1257
§ 67-4230. Park management — Alienation of land.	1258
§ 67-4231. Highest use — Eminent domain.	1260
§ 67-4232. Recreation trails system — Definitions.	1261
§ 67-4233. Idaho recreation trails coordinator.	1263
§ 67-4234. Duties of coordinator.	1264
§ 67-4235. Penalty for defacing or destroying trail.	1265
§ 67-4236. Appropriation — Use of available moneys — Indemnification of owners of land adjacent to trails.	1266
§ 67-4237. Parking violations.	1267
§ 67-4238. Authority of director to enter into agreements.	1269
§ 67-4239. Enforcement authority.	1271
§ 67-4240. Legislative intent.	1272
§ 67-4241. Park land trust — Created — Acquisition of	1273

property authorized.	
§ 67-4242. Exchange or sale of property held in park land trust.	1274
§ 67-4243. Control, management, and administration of property held in park land trust.	1275
§ 67-4244. Appropriation — Use of income.	1276
§ 67-4245. Short title.	1277
§ 67-4246. Legislative intent.	1278
§ 67-4247. State trust fund for outdoor recreation enhancement — Creation, administration, eligible recipients.	1279
§ 67-4247A. State trust fund for outdoor recreation enhancement — grant evaluation committee. [Repealed.]	1281
§ 67-4248. Management of funded projects and lands.	1282
§ 67-4249. Rules.	1284
Chapter 43 PRESERVATION OF CERTAIN LAKES AS HEALTH RESORTS AND RECREATION PLACES	1285
§ 67-4301. Big Payette Lake — Appropriation of waters in trust for people.	1287
§ 67-4302. Big Payette Lake — Lands devoted to health and recreational uses.	1288
§ 67-4303. Big Payette Lake — Separability of act.	1289
§ 67-4304. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Appropriation of waters in trust for people.	1290
§ 67-4305. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Lands devoted to health and recreational use.	1292
§ 67-4306. Priest, Pend d'Oreille, and Coeur d'Alene Lakes — Separability of act.	1294
§ 67-4307. Malad Canyon — Appropriation of waters in trust for people — Lands devoted to recreational use.	1295
§ 67-4308. Niagara Springs — Appropriation of waters in trust for people.	1297
§ 67-4309. Big Springs — Appropriation of waters in trust for people.	1299
§ 67-4310. Box Canyon — Appropriation of waters in trust	1300

for people — Lands devoted to natural scientific study and limited recreational use — Legislative finding of fact concerning desirability of public use of water and private land within upper Box Canyon — Legislative direction for cooperation by state agencies to facilitate negotiations.	
§ 67-4311. Thousand Springs — Appropriation of waters in trust for people — Lands devoted to recreational use upon cessation of electrical generation.	1302
§ 67-4312. Permits for appropriation under sections 67-4307 — 67-4311.	1303
Chapter 44 LAVA HOT SPRINGS	1304
§ 67-4401. Management and control.	1306
§ 67-4402. Powers and duties of foundation.	1309
§ 67-4403. Description of property.	1311
§ 67-4404. Executive director — Appointment, powers, and duties.	1313
§ 67-4405. Receipts and appropriation inuring to use of foundation.	1314
§ 67-4406. Lease of property authorized.	1315
§ 67-4407. Suspension of Lava Hot Springs Foundation Act upon leasing.	1316
§ 67-4408. Appropriation for operation when not leased.	1317
§ 67-4409. Lava Hot Springs capital improvement account.	1318
Chapter 45 STATE SYMBOLS	1319
§ 67-4501. State bird designated.	1321
§ 67-4502. State flower designated.	1322
§ 67-4503. State song designated.	1323
§ 67-4504. State tree designated.	1324
§ 67-4505. State gem designated.	1325
§ 67-4506. State horse designated.	1326
§ 67-4507. State fossil designated.	1327
§ 67-4508. State fish designated.	1328
§ 67-4509. State insect designated.	1329

§ 67-4510. State fruit designated.	1330
§ 67-4511. State vegetable designated.	1331
§ 67-4512. State raptor designated.	1332
§ 67-4513. State noxious and invasive weed awareness week.	1333
§ 67-4514. State amphibian designated.	1334
Chapter 46 PRESERVATION OF HISTORIC SITES	1335
§ 67-4601. Purpose.	1337
§ 67-4602. Definitions.	1338
§ 67-4603. Preservation commissions authorized — Members — Appointment — Term — Staff.	1339
§ 67-4604. Powers and duties of commissions.	1340
§ 67-4605. Funding of operations.	1342
§ 67-4606. Acquisition of property.	1343
§ 67-4607. Historic districts.	1344
§ 67-4608. Certificate of appropriateness.	1345
§ 67-4609. Change in use.	1347
§ 67-4610. Notice to owner — Appeal.	1348
§ 67-4611. Ordinary repairs — Safety.	1349
§ 67-4612. Special restrictions.	1350
§ 67-4613. Historic easements.	1351
§ 67-4614. Designation as historic property.	1352
§ 67-4615. Procedure for designation.	1354
§ 67-4616. Change in use of historic property.	1355
§ 67-4617. Penalties.	1357
§ 67-4618. Exemption from health or building codes.	1358
§ 67-4619. Transfer of development rights.	1359
Chapter 47 DEPARTMENT OF COMMERCE	1360
§ 67-4701. Department of commerce created.	1364
§ 67-4702. Authority and duties of the director.	1365
§ 67-4703. Powers and duties.	1368
§ 67-4703A. Foreign trade zones.	1371
§ 67-4704. Economic advisory council — Appointment of	1372

members — Qualifications.	
§ 67-4705. Idaho development and publicity account.	1374
§ 67-4706. Community affairs functions and responsibilities of the department.	1375
§ 67-4707. Funds of department.	1376
§ 67-4708. Business records.	1377
§ 67-4709. Reports by participating agencies. [Repealed.]	1379
§ 67-4710. Declaration of policy.	1380
§ 67-4711. Definitions.	1381
§ 67-4712. Idaho travel and convention industry council — Created — Appointment of members.	1383
§ 67-4713. Members' qualifications — Term of office — Conflict of interest.	1384
§ 67-4714. Meetings of the council.	1386
§ 67-4715. Duties and powers of the council.	1387
§ 67-4716. Administrative expenses — Limitation.	1389
§ 67-4717. Regional and statewide grant program.	1390
§ 67-4718. Assessment — Council account.	1391
§ 67-4719. Penalties.	1393
§ 67-4720. Tourist information signs.	1394
§ 67-4721. Purpose.	1397
§ 67-4722. Economic development financing account.	1398
§ 67-4723. Grants — Standards and administration.	1399
§ 67-4723A. Idaho small business federal funding assistance act — Fund created.	1401
§ 67-4724. Return to the state.	1403
§ 67-4725. Idaho global entrepreneurial mission grant fund.	1404
§ 67-4726. Idaho global entrepreneurial mission council — Appointment of members — Qualifications.	1406
§ 67-4727. Nursing workforce advisory council — Members — Officers — Compensation — Idaho nursing workforce center. [Null and void.]	1409
§ 67-4728. Film and television production business rebate	1410

fund. [Null and void.]	
§ 67-4729. Department of commerce and IGEM council rules and responsibilities.	1411
§ 67-4730. Idaho global entrepreneurial mission (IGEM) research.	1414
§ 67-4731. Commercialization revenue distribution.	1415
§ 67-4732. Idaho opportunity fund — Short title — Legislative intent.	1417
§ 67-4733. Director rulemaking authority.	1418
§ 67-4734. Idaho opportunity fund.	1419
§ 67-4735. Agreements required and disbursement of funds.	1421
§ 67-4736. Annual report by director.	1424
§ 67-4737. Idaho reimbursement incentive act — Short title — Legislative intent.	1425
§ 67-4738. Definitions.	1426
§ 67-4739. Application — Process — Agreements — Reimbursement.	1430
§ 67-4740. Agreement with applicant.	1432
§ 67-4741. Applicant's annual reporting procedure.	1434
§ 67-4742. Annual reporting by department.	1436
§ 67-4743. Suspension of Idaho reimbursement incentive act.	1438
§ 67-4744. Director rulemaking authority.	1439
Chapter 48 SURPLUS PROPERTY AGENCY	1440
§ 67-4801—67-4806. Surplus property. [Repealed.]	1442
Chapter 49 AUDITORIUM DISTRICTS	1443
§ 67-4901. Purpose of act.	1446
§ 67-4902. Definitions.	1447
§ 67-4903. Jurisdiction to establish districts.	1449
§ 67-4904. Petition — Contents — Amendments.	1450
§ 67-4905. Bond of petitioners.	1452
§ 67-4906. Notice of hearing on petition — Jurisdiction.	1453
§ 67-4907. Hearings on petitions — Election for organization and officers.	1454

§ 67-4908. Qualification of members of board.	1457
§ 67-4909. Organization of board — Accounts of treasurer — Compensation of members — Annual audit — Removal of directors.	1458
§ 67-4910. Meetings — Vacancies.	1459
§ 67-4911. Elections — Terms of office.	1460
§ 67-4912. General powers of board.	1462
§ 67-4913. Taxes.	1465
§ 67-4914. Levy and collection of taxes.	1466
§ 67-4915. Levies to cover defaults and deficiencies.	1467
§ 67-4916. Officers to levy and collect taxes.	1468
§ 67-4917. Sinking fund.	1469
§ 67-4917A. Purposes.	1470
§ 67-4917B. Hotel/motel room sales tax.	1471
§ 67-4917C. Collection and administration of hotel/motel room sales tax by state tax commission — Distribution.	1473
§ 67-4918. Inclusion of property petitioned — Hearing — Order.	1475
§ 67-4919. Exclusion of property petitioned — Hearing — Order.	1476
§ 67-4920. Liability of property included or excluded.	1477
§ 67-4921. Issuance of negotiable coupon bonds — Form and terms.	1478
§ 67-4922. Submission of proposition to electorate.	1479
§ 67-4922A. Leasing of land and improvements.	1481
§ 67-4923. Notice of election.	1482
§ 67-4924. Conduct of election — Canvass of returns.	1483
§ 67-4925. Effect of election — Subsequent elections.	1484
§ 67-4926. Correction of faulty notices.	1486
§ 67-4927. Share of liquor fund allotted to auditorium districts. [Repealed.]	1487
§ 67-4928. Elections — Validation of acts.	1488
§ 67-4929. Inclusion or exclusion — Election procedure.	1489

§ 67-4930. Dissolution of district — Procedure.	1491
§ 67-4931. Application of campaign report law to auditorium district elections. [Repealed.]	1494
Chapter 50 COMMISSION ON AGING	1495
§ 67-5001. Creation of commission on aging — Composition — Appointment.	1497
§ 67-5002. Organization — Meetings — Quorum — Compensation — Expenses.	1499
§ 67-5003. Powers and duties of commission.	1500
§ 67-5004. Administrator — Appointment and term.	1502
§ 67-5005. Legislative intent.	1503
§ 67-5006. Definitions.	1504
§ 67-5007. Grants to and contracts with local area agencies.	1508
§ 67-5008. Programs for older persons.	1509
§ 67-5009. Office of ombudsman for the elderly.	1511
§ 67-5010. Grants or contracts for demonstration projects.	1515
§ 67-5011. Adult protective services.	1516
Chapter 51 JURISDICTION IN INDIAN COUNTRY	1517
§ 67-5101. State jurisdiction for civil and criminal enforcement concerning certain matters arising in Indian country.	1519
§ 67-5102. Additional state jurisdiction with consent of tribe governing body.	1526
§ 67-5103. Matters excepted from state jurisdiction.	1528
Chapter 52 IDAHO ADMINISTRATIVE PROCEDURE ACT	1531
§ 67-5201. Definitions.	1535
§ 67-5202. Office of the administrative rules coordinator.	1548
§ 67-5202A. Numbering and format of rules. [Repealed.]	1550
§ 67-5203. Publication of administrative bulletin.	1551
§ 67-5203A. [Amended and Redesignated.]	1553
§ 67-5204. Publication of administrative code.	1554
§ 67-5205. Format — Costs — Distribution — Funds.	1556

§ 67-5206. Promulgation of rules implementing administrative procedure act.	1561
§ 67-5207. Short title.	1564
§ 67-5208—67-5219. [Reserved.]	1565
§ 67-5220. Notice of intent to promulgate rules — Negotiated rulemaking.	1566
§ 67-5221. Public notice of proposed rulemaking.	1569
§ 67-5222. Public participation.	1575
§ 67-5223. Interim legislative review — Statement of economic impact.	1576
§ 67-5224. Pending rule — Final rule — Effective date.	1579
§ 67-5225. Rulemaking record.	1582
§ 67-5226. Temporary rules.	1583
§ 67-5227. Variance between pending rule and proposed rule.	1585
§ 67-5228. Exemption from regular rulemaking procedures.	1586
§ 67-5229. Incorporation by reference.	1587
§ 67-5230. Petition for adoption, amendment, repeal, or waiver of rules.	1590
§ 67-5231. Invalidity of rules not adopted in compliance with this chapter — Time limitation.	1593
§ 67-5232. Declaratory rulings by agencies.	1595
§ 67-5233—67-5239. [Reserved.]	1596
§ 67-5240. Contested cases.	1596
§ 67-5241. Informal disposition.	1599
§ 67-5242. Procedure at hearing.	1601
§ 67-5243. Orders not issued by agency head.	1606
§ 67-5244. Review of recommended orders.	1607
§ 67-5245. Review of preliminary orders.	1608
§ 67-5246. Final orders — Effectiveness of final orders.	1610
§ 67-5247. Emergency proceedings.	1613
§ 67-5248. Contents of orders.	1614
§ 67-5249. Agency record.	1618

§ 67-5250. Indexing of precedential agency orders — Indexing of agency guidance documents.	1619
§ 67-5251. Evidence — Official notice.	1621
§ 67-5252. Presiding officer — Disqualification.	1626
§ 67-5253. Ex parte communications.	1628
§ 67-5254. Agency action against licensees.	1629
§ 67-5255. Declaratory rulings by agencies.	1632
§ 67-5256—67-5269. [Reserved.]	1633
§ 67-5270. Right of review.	1633
§ 67-5271. Exhaustion of administrative remedies.	1654
§ 67-5272. Venue — Form of action.	1657
§ 67-5273. Time for filing petition for review.	1659
§ 67-5274. Stay.	1662
§ 67-5275. Agency record for judicial review.	1663
§ 67-5276. Additional evidence.	1664
§ 67-5277. Judicial review of issues of fact.	1667
§ 67-5278. Declaratory judgment on validity or applicability of rules.	1669
§ 67-5279. Scope of review — Type of relief.	1672
§ 67-5280—67-5290. [Reserved.]	1690
§ 67-5291. Legislative review of rules.	1690
§ 67-5292. Expiration of administrative rules.	1696
Chapter 53 PERSONNEL SYSTEM	1698
§ 67-5301. Establishment of division of human resources and declaration of policy.	1701
§ 67-5302. Definitions.	1702
§ 67-5303. Application to state employees.	1712
§ 67-5303A. Compensation of exempt employees. [Repealed.]	1721
§ 67-5304. Existing merit systems and personnel systems.	1722
§ 67-5305. Employees hired prior to enactment of this act.	1723
§ 67-5306. Applicability of federal merit system standards.	1724

§ 67-5307. Organization of commission.	1725
§ 67-5308. Authority and duties of the division of human resources — Selection of administrator.	1727
§ 67-5309. Rules of the division of human resources and the personnel commission.	1728
§ 67-5309A. State employee compensation philosophy.	1740
§ 67-5309B. Idaho compensation plan.	1742
§ 67-5309C. Annual surveys, reports and recommendations.	1744
§ 67-5309D. Other pay delivery options.	1746
§ 67-5310. Service to other political subdivisions.	1749
§ 67-5311. Limitation of political activity.	1750
§ 67-5312. Violations.	1752
§ 67-5313. Veterans' preference.	1753
§ 67-5314. Method of financing.	1754
§ 67-5315. Establishment and adoption of employee problem solving and due process procedures.	1756
§ 67-5316. Appeal procedure.	1761
§ 67-5317. Petition for review procedure.	1770
§ 67-5318. Appeal to district court.	1773
§ 67-5319—67-5325. Hours of work — Overtime. [Repealed.]	1775
§ 67-5326. Hours of work — State policy — Overtime. [Repealed.]	1776
§ 67-5327. Definitions. [Repealed.]	1777
§ 67-5328. Hours of work and overtime.	1778
§ 67-5329. [Amended and Redesignated.]	1782
§ 67-5330. [Amended and Redesignated.]	1783
§ 67-5331. [Amended and Redesignated.]	1784
§ 67-5332. Credited state service — Applicability — Computation.	1785
§ 67-5333. Sick leave.	1787
§ 67-5333A. Sick leave transferred — Public education entity and state educational agency.	1793

§ 67-5333B. Sick leave transferred — Former employees of Seland college of applied technology at Boise state university — State employment.	1795
§ 67-5334. Vacation time.	1796
§ 67-5335. [Amended and Redesignated.]	1800
§ 67-5336. Paid holidays — Exemption from holiday work. [Repealed.]	1801
§ 67-5337. Moving expense reimbursement.	1802
§ 67-5338. Red cross disaster services.	1803
§ 67-5339. Loan repayment program.	1804
§ 67-5340. Leave of absence with pay in lieu of workmen's compensation benefits.	1807
§ 67-5341. Retiree medical insurance coverage — Legislative intent — Account created — Voluntary employee participation — Salary withholding — Administration of program. [Repealed.]	1809
§ 67-5342. Severance pay for state employees.	1810
§ 67-5342A. Severance pay — Purchase of membership service prohibited.	1811
§ 67-5343. Leave of absence for bone marrow or organ donation.	1812
Chapter 54 COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED	1814
§ 67-5401. Purposes.	1816
§ 67-5402. Definitions.	1817
§ 67-5403. Commission for the blind and visually impaired — Creation — Composition — Appointment — Transfer of powers from department of public assistance.	1819
§ 67-5404. Compensation.	1820
§ 67-5405. Organization of commission — Employment of administrator.	1821
§ 67-5406. Meetings — Quorum.	1822
§ 67-5407. Duties.	1823
§ 67-5408. Commission as agency to administer rehabilitation	1825

in federal programs.	
§ 67-5409. Qualifications for the administrator and other employees.	1826
§ 67-5410. Limitation on disclosure by commission concerning persons applying for services to the blind.	1827
§ 67-5411. Commission as sole licensing agency under the provisions of the Randolph-Sheppard vending stand act.	1828
§ 67-5412. Administrator to prepare a state plan for vocational rehabilitation of the blind.	1829
§ 67-5413. Acceptance of federal acts.	1830
§ 67-5414. Reports of medical authorities establishing blindness.	1831
§ 67-5415. Statistical register of blind — Maintenance by administrator.	1832
Chapter 55 POST-ATTACK RESOURCE MANAGEMENT ACT	1833
§ 67-5501. Short title.	1835
§ 67-5502. Purpose of act — Possibility of attack — Need for emergency powers — Coordination with comparable functions of federal government.	1836
§ 67-5503. Definitions.	1837
§ 67-5504. State emergency resource planning committee — Members — State emergency planning director.	1838
§ 67-5505. Authority of governor — Cooperation with federal government, other states, private agencies — Rules and regulations.	1839
§ 67-5506. Order of post-attack recovery and rehabilitation emergency by governor — Convening of legislature — Emergency declared by president — Termination of emergency by legislature, president or congress — Automatic termination.	1840
§ 67-5507. Review of orders and acts by supreme court.	1842
§ 67-5508. Penalties.	1843
Chapter 56 COMMISSION ON ARTS	1844
§ 67-5601. Declaration of policy.	1846

§ 67-5602. Commission on the arts — Creation — Membership.	1847
§ 67-5603. Terms of members — Appointment of officers — Service of members — Compensation.	1848
§ 67-5604. Employees.	1849
§ 67-5605. Duties of commission.	1850
§ 67-5606. Hearings — Contracts — Acceptance of gifts and bequests.	1851
§ 67-5607. Agency to handle funds from national endowment.	1852
§ 67-5608. Transfer of powers, duties, records, assets, and liabilities of temporary commission. [Repealed.]	1853
Chapter 57 DEPARTMENT OF ADMINISTRATION	1854
§ 67-5701. Department created — Appointment of director — Duties.	1861
§ 67-5702. Divisions — Appointment of administrators.	1862
§ 67-5703. Department of administration may receive payment for services to federal, county and city agencies — Appropriation.	1863
§ 67-5704. Advance payments and interaccount transactions.	1864
§ 67-5705. Division of public works.	1865
§ 67-5706. Allocation of office space.	1866
§ 67-5707. Control over capitol building and grounds. [Repealed.]	1867
§ 67-5707A. Procedures for state-owned dwellings.	1868
§ 67-5708. Leasing of facilities for state use — Control of parking.	1869
§ 67-5708A. State facilities management — Comparative lease cost analysis and accountability.	1872
§ 67-5708B. Facilities needs planning.	1874
§ 67-5709. Management of state facilities.	1876
§ 67-5709A. Sale, transfer or disposition of state administrative facilities.	1880
§ 67-5709B. Development of facilities. [Null and void.]	1882

§ 67-5710. Permanent building fund advisory council — Approval of use of fund — Duties of administrator of public works.	1883
§ 67-5710A. Requirement of plans and specification approval by permanent building fund advisory council and delegation of project oversight by the administrator for the division of public works.	1885
§ 67-5710B. Definitions.	1888
§ 67-5711. Construction, alteration, equipping, furnishing and repair of public buildings and works.	1890
§ 67-5711A. Design-build contracting authorized.	1894
§ 67-5711B. Emergency contracting authorized division of public works.	1895
§ 67-5711C. Construction of public projects — Competitive sealed bidding.	1897
§ 67-5711D. Energy savings performance contracts.	1901
§ 67-5711E. Legislative intent — Capitol building projects — Construction manager at-risk services. [Null and void.]	1907
§ 67-5711F. Capitol building projects — Chapter 10, title 44, Idaho Code, inapplicable. [Null and void.]	1908
§ 67-5712. Projection of building requirements report.	1909
§ 67-5713. Construction and alteration of state correctional facilities.	1910
§ 67-5714. Division of purchasing. [Repealed.]	1912
§ 67-5715. Purpose of act. [Repealed.]	1913
§ 67-5716. Definitions. [Repealed.]	1914
§ 67-5717. Powers and duties of the administrator of the division of purchasing. [Repealed.]	1915
§ 67-5718. Requisitions for property — Notice — Form — Guarantee — Procedure for bidding. [Repealed.]	1916
§ 67-5718A. Acquisition of property by contract — Award to more than one bidder — Standards for multiple awards — Approval by administrator. [Repealed.]	1917
§ 67-5719. Statement of supplies on hand — Estimated	1918

requirements — Inspections and inventories. [Repealed.]	
§ 67-5720. Acquisition in open market — Emergency purchases. [Repealed.]	1919
§ 67-5721. Acquisition of nonowned property — Options to acquire — Determination of option costs. [Repealed.]	1920
§ 67-5722. Declaration of surplus property.	1921
§ 67-5723. Discounts — Negotiations for required rules, regulations and procedures. [Repealed.]	1923
§ 67-5724. Contracts with federal government or its agencies exempt from certain provisions. [Repealed.]	1924
§ 67-5724A. Acquisition of property — General services administration federal supply schedule contracts. [Repealed.]	1925
§ 67-5725. Preservation of records — Written contracts — Void contracts. [Repealed.]	1926
§ 67-5726. Prohibitions. [Repealed.]	1927
§ 67-5727. Maintenance of stocks — Requisitions from stocks — Payment. [Repealed.]	1928
§ 67-5727A. Participation in group discount purchasing. [Repealed.]	1929
§ 67-5728. Procuring and purchasing by state institution of higher education. [Repealed.]	1930
§ 67-5729. Application of administrative procedure act. [Repealed.]	1931
§ 67-5730. Qualification of vendors — disqualification of vendors — Notice — Appeals. [Repealed.]	1932
§ 67-5731. Procedure for challenging specifications — Hearings on influencing contracts — Final determinations. [Repealed.]	1933
§ 67-5732. Rules. [Repealed.]	1934
§ 67-5732a. Control over capitol building and grounds. [Repealed.]	1935
§ 67-5732b. Status of transferred employees unaffected. [Repealed.]	1936
§ 67-5732A. Disposal of surplus personal property	1937

authorized.

§ 67-5732B. Governor's housing committee personal property exempt from act.	1938
§ 67-5733. Division of purchasing — Appeals. [Repealed.]	1939
§ 67-5734. Penalties. [Repealed.]	1940
§ 67-5735. Processing — Reimbursement of contractor. [Repealed.]	1941
§ 67-5736. Acceptance. [Repealed.]	1942
§ 67-5737. Severability.	1943
§ 67-5738, 67-5739. State car pool system — Transfers — Procedures — Claims not to be approved. [Repealed.]	1944
§ 67-5740. Additional authority and duties of the administrator of the division of purchasing.	1945
§ 67-5741. Delegation of duties — Bonding of agency personnel.	1949
§ 67-5742. Delegation of authority to acquire surplus property.	1950
§ 67-5743. Transfer charges.	1951
§ 67-5744. Surplus property fund maintained — Charges and fees, deposition.	1952
§ 67-5745. Declaration of purpose. [Repealed.]	1954
§ 67-5745A. Definitions. [Repealed.]	1955
§ 67-5745B. Idaho technology authority — Composition — Appointment and term of office — Reimbursement — Contracting for necessary services. [Repealed.]	1956
§ 67-5745C. General powers and duties of the authority. [Repealed.]	1957
§ 67-5745D. Idaho education network. [Repealed.]	1958
§ 67-5745E. Idaho education network program and resource advisory council (IPRAC). [Repealed.]	1959
§ 67-5746. Inventory of chattels — Contents — Duties of officers and employees — Recording — Annual revision — Open to inspection.	1960
§ 67-5747. Powers and duties. [Repealed.]	1962

§ 67-5748. Transfer of funds, equipment, facilities, and employees.	1963
§ 67-5749. Central postal system.	1964
§ 67-5750. Postage appropriations — Records of departmental mail kept through central postal system — Exception.	1965
§ 67-5751. Records management. [Repealed.]	1967
§ 67-5751A. Historical records. [Repealed.]	1968
§ 67-5752. Records management manual. [Repealed.]	1969
§ 67-5752A. Additional powers, duties, functions and responsibilities of bureau of budget. [Repealed.]	1970
§ 67-5753. Microfilming services. [Repealed.]	1971
§ 67-5754. [Amended and Redesignated.]	1972
§ 67-5755. [Amended and Redesignated.]	1973
§ 67-5756. [Amended and Redesignated.]	1974
§ 67-5757. [Amended and Redesignated.]	1975
§ 67-5758. [Amended and Redesignated.]	1976
§ 67-5759. [Amended and Redesignated.]	1977
§ 67-5760. Insurance management.	1978
§ 67-5761. Powers and duties — Group insurance.	1979
§ 67-5761A. Mental health parity in state group insurance.	1983
§ 67-5761B. State contribution to state employee health savings accounts.	1986
§ 67-5761C. Health reimbursement arrangements for state employees.	1988
§ 67-5762. Objectives and considerations.	1990
§ 67-5763. Governmental body authorized to make contracts for group insurance for officers and employees.	1991
§ 67-5764. Part payment of premium cost by governmental body.	1992
§ 67-5765. Government retirement program or group insurance plans in existence unaffected.	1993
§ 67-5766. Authority conferred additional only.	1994

§ 67-5767. Director may provide service to school districts, public community colleges, public colleges, public universities or other political subdivisions.	1995
§ 67-5768. Nominal policyholder — No obligation to state.	1997
§ 67-5769. Inter-departmental transactions — Administrative contribution — Amounts — Limits — Refunds — Appropriation.	1999
§ 67-5770. Retirement system not affected.	2001
§ 67-5771. Group insurance account created — Administration — Perpetual appropriation.	2002
§ 67-5772. Remittance of contributions — Collection of delinquencies.	2003
§ 67-5773. Powers and duties — Risk management.	2005
§ 67-5774. Position of risk manager created — Appointment — Employment of personnel.	2008
§ 67-5775. Risk management guidelines.	2009
§ 67-5776. Retained risks account — Purposes — Amount — Limit — Appropriation — Investment.	2010
§ 67-5777. Interdepartmental transactions — Purposes — Appropriation.	2013
§ 67-5778. Collection of delinquent payments.	2015
§ 67-5779. Definitions. [Repealed.]	2017
§ 67-5780. Integrated property records system — Transfer of responsibility. [Repealed.]	2018
§ 67-5781. Agencies to provide records and data. [Repealed.]	2019
§ 67-5782. Responsibility for quality. [Repealed.]	2020
Chapter 58 PROTECTION OF NATURAL RESOURCES	2021
§ 67-5801. Scope and purpose.	2023
§ 67-5802. Protection plan — Procedure — Responsibilities of state agencies — Annual revision — Approval.	2024
§ 67-5803. Training institutes for suppression of natural resources disasters.	2025
§ 67-5804. Proclamation of natural resources disaster — Aid by agency — Claim for reimbursement.	2026

§ 67-5805. Legislative findings and intent.	2027
§ 67-5806. Declaration of emergency.	2029
§ 67-5807. Governor — Executive orders.	2030
Chapter 59 COMMISSION ON HUMAN RIGHTS	2033
§ 67-5901. Purpose of chapter.	2035
§ 67-5902. Definitions.	2040
§ 67-5903. Creation of commission on human rights — Members — Appointment.	2044
§ 67-5904. Organization of commission — Compensation of members.	2045
§ 67-5905. Administrative support — Appointment of commission staff — Duties of administrator.	2046
§ 67-5906. Powers and duties of commission.	2048
§ 67-5907. Complaints — Procedure on complaint.	2050
§ 67-5907A. Compliance with the Idaho tort claims act.	2053
§ 67-5908. Procedure in district court.	2054
§ 67-5908a. Preexisting rights of action. [Repealed.]	2059
§ 67-5909. Acts prohibited.	2060
§ 67-5909A. Acts prohibited — Public employment — Public education.	2075
§ 67-5910. Limitations.	2077
§ 67-5911. Reprisals for opposing unlawful practices.	2081
§ 67-5912. Persons immune from civil personal liability for acts performed in connection with carrying out provisions of this act.	2083
Chapter 60 IDAHO WOMEN’S COMMISSION	2084
§ 67-6001. Establishment and purpose of the commission.	2086
§ 67-6002. Members — Appointment — Vacancies — Officers.	2087
§ 67-6003. Members — Expenses allowed.	2088
§ 67-6004. Power to accept federal funds — Gifts.	2089
§ 67-6005. State departments and agencies to cooperate.	2090
§ 67-6006. Report and recommendations.	2091

§ 67-6007. Director — Appointment and term.	2092
Chapter 61 STATE EMPLOYEE INCENTIVE AWARDS	2093
§ 67-6101—67-6108. Legislative intent — Awards committee — Meetings — Rules and regulations — Awards participation — Funding — Exemption. [Repealed.]	2095
Chapter 62 IDAHO HOUSING AND FINANCE ASSOCIATION	2096
§ 67-6201. Purpose.	2099
§ 67-6202. Idaho housing and finance association created.	2103
§ 67-6203. Commissioners — Chairman — Appointments.	2104
§ 67-6204. Vice-chairman, executive director and other personnel — Appointments — Quorum.	2106
§ 67-6205. Definitions.	2107
§ 67-6206. Powers of association.	2114
§ 67-6207. Management and operation of housing projects — Priority of applications — Limited profit sponsors.	2121
§ 67-6207A. Additional powers.	2123
§ 67-6207B. Mortgage loans — Rules — Purchase.	2125
§ 67-6207C. Housing sponsorship.	2129
§ 67-6207D. Periodic examination of income of persons residing in housing projects.	2132
§ 67-6208. Tax exempt status.	2134
§ 67-6209. Housing projects subjected to ordinances and regulations.	2136
§ 67-6210. Power to issue bonds.	2137
§ 67-6211. Additional definitions and capital reserve fund procedures.	2144
§ 67-6212. Refunding of obligations.	2149
§ 67-6213. Deposit of funds.	2151
§ 67-6214. Rights of bondholder.	2152
§ 67-6215. Rights not to be impaired by state.	2153
§ 67-6215A. Remedies of bondholders.	2154
§ 67-6215B. Legal investments.	2156
§ 67-6216. Authority to make loans.	2157

§ 67-6217. Disbursement of moneys. [Repealed.]	2158
§ 67-6218. Feasibility.	2159
§ 67-6219. Technical assistance.	2160
§ 67-6220. Audits — Annual reports.	2161
§ 67-6221. Conflict of interest.	2162
§ 67-6222. Exemption of real property of association from levy and sale by execution.	2163
§ 67-6223. Borrowing power — Financial assistance — Cooperation with state and federal government.	2164
§ 67-6223A. Donations to housing and finance association.	2166
§ 67-6224. Construction of act.	2167
§ 67-6224A. Legislative construction.	2169
§ 67-6225. Constitutionality.	2170
§ 67-6226. Non-agency status.	2171
Chapter 63 CONSTITUTIONAL DEFENSE COUNCIL	2172
§ 67-6301. Constitutional defense council created — Members — Powers — Staff — Fund.	2174
§ 67-6302. Legislative approval required for certain actions.	2176
§ 67-6303—67-6305. Duties of Bicentennial Commission — Meetings and hearings — Fund — Appropriation. [Repealed.]	2177
Chapter 64 IDAHO STATE BUILDING AUTHORITY ACT	2178
§ 67-6401. Short title.	2181
§ 67-6402. Definitions.	2182
§ 67-6403. Creation of authority.	2184
§ 67-6404. Declaration of policy.	2185
§ 67-6405. Appointment and removal of commissioners.	2187
§ 67-6406. Executive director.	2189
§ 67-6407. Conflict of interest.	2190
§ 67-6408. No forfeiture of office.	2191
§ 67-6409. General powers of the authority.	2192
§ 67-6410. Procedure prior to financing building developments or building projects.	2196

§ 67-6411. Cooperation with municipalities, state bodies or community college districts.	2197
§ 67-6412. Exemption from taxation.	2198
§ 67-6413. Annual report.	2199
§ 67-6414. Bonding provisions.	2200
§ 67-6415. Refunding obligations — Issuance.	2204
§ 67-6416. Refunding obligations — Use of proceeds.	2205
§ 67-6417. Deposit of authority moneys.	2206
§ 67-6418. Contract of the state.	2207
§ 67-6419. Limitation of liability on authority obligations.	2208
§ 67-6420. Remedies of bond and note holders.	2209
§ 67-6421. State grants and leases to authority.	2211
§ 67-6422. Authority obligations are legal investments.	2212
§ 67-6423. Act not a limitation of powers.	2213
§ 67-6424. Inconsistency with other laws.	2214
Chapter 65 LOCAL LAND USE PLANNING	2215
§ 67-6501. Short title.	2219
§ 67-6502. Purpose.	2223
§ 67-6503. Participation of local governments.	2227
§ 67-6504. Planning and zoning commission — Creation — Membership — Organization — Rules — Records — Expenditures — Staff.	2228
§ 67-6505. Joint planning and zoning commission — Formation — Duties.	2234
§ 67-6506. Conflict of interest prohibited.	2235
§ 67-6507. The planning process and related powers of the commission.	2238
§ 67-6508. Planning duties.	2240
§ 67-6509. Recommendation and adoption, amendment, and repeal of the plan.	2248
§ 67-6509A. Siting of manufactured homes in residential areas — Plan to be amended.	2252
§ 67-6509B. Manufactured housing community — Equal	2254

treatment required.	
§ 67-6510. Mediation — Time limitations tolled.	2255
§ 67-6511. Zoning ordinance.	2257
§ 67-6511A. Development agreements.	2267
§ 67-6512. Special use permits, conditions, and procedures.	2270
§ 67-6513. Subdivision ordinance.	2276
§ 67-6514. Existing zoning or subdivision ordinances.	2278
§ 67-6515. Planned unit developments.	2279
§ 67-6515A. Transfer of development rights.	2281
§ 67-6516. Variance — Definition — Application — Notice — Hearing.	2285
§ 67-6517. Future acquisitions map.	2289
§ 67-6518. Standards.	2291
§ 67-6519. Application granting process.	2292
§ 67-6520. Hearing examiners.	2299
§ 67-6521. Actions by affected persons.	2301
§ 67-6522. Combining of permits — Permits to assessor.	2312
§ 67-6523. Emergency ordinances and moratoriums.	2313
§ 67-6524. Interim ordinances and moratoriums.	2314
§ 67-6525. Plan and zoning ordinance changes upon annexation of unincorporated area.	2315
§ 67-6526. Areas of city impact — Negotiation procedure.	2317
§ 67-6527. Violations — Criminal penalties — Enforcement.	2323
§ 67-6528. Applicability of ordinances.	2324
§ 67-6529. Applicability to agricultural land — Counties may regulate siting of certain animal operations and facilities.	2326
§ 67-6529A. Short title.	2330
§ 67-6529B. Legislative findings and purposes.	2331
§ 67-6529C. Definitions.	2332
§ 67-6529D. Odor management plans — County request for suitability determination — Local regulation.	2335
§ 67-6529E. Process for county request — Contents of the	2336

request.	
§ 67-6529F. Department responsibilities — Authority to adopt rules and contract with other agencies.	2337
§ 67-6529G. Report of CAFO site advisory team — County action.	2339
§ 67-6529H. Site suitability determination — Application fees.	2340
§ 67-6530. Declaration of purpose.	2342
§ 67-6531. Single family dwelling.	2343
§ 67-6532. Licensure, standards and restrictions.	2345
§ 67-6533. Location of stores selling sexual material restricted in certain areas.	2347
§ 67-6534. Adoption of hearing procedures.	2349
§ 67-6535. Approval or denial of any application to be based upon express standards and to be in writing.	2351
§ 67-6536. Transcribable record.	2357
§ 67-6537. Use of surface and ground water.	2359
§ 67-6538. Use for designed purpose protected — When vacancy occurs.	2361
§ 67-6539. Limitations on regulation of short-term rentals and vacation rentals.	2363
Chapter 66 ELECTION CAMPAIGN CONTRIBUTIONS AND EXPENDITURES — LOBBYISTS	2364
§ 67-6601. Purpose of chapter.	2367
§ 67-6602. Definitions.	2369
§ 67-6603. Appointment of political treasurer.	2378
§ 67-6604. Accounts of political treasurer.	2380
§ 67-6605. Contributions obtained by a political committee.	2382
§ 67-6606. Expenditures by nonbusiness entity.	2383
§ 67-6607. Reports of contributions and expenditures by candidates and political committees.	2385
§ 67-6608. Special provision for certain elections and measures.	2389

§ 67-6609. Statement as to no contribution or expenditure.	2391
§ 67-6610. Contribution in excess of fifty dollars.	2392
§ 67-6610A. Limitations on contributions.	2394
§ 67-6610B. Retiring debt.	2398
§ 67-6610C. Use of contributed amounts for certain purposes.	2399
§ 67-6611. Independent expenditures.	2402
§ 67-6612. Disclosure of payments made to signature gatherers.	2404
§ 67-6613. Commercial reporting.	2406
§ 67-6614. Identification of source of contributions and expenditures.	2407
§ 67-6614A. Publication or distribution of political statements.	2408
§ 67-6615. Inspection by secretary of state and county clerks.	2409
§ 67-6616. Examination of statements.	2410
§ 67-6617. Registration of lobbyists.	2412
§ 67-6618. Exemption from registration.	2415
§ 67-6619. Reporting by lobbyists.	2418
§ 67-6619A. Reports by state entities.	2422
§ 67-6620. Employment of unregistered persons.	2423
§ 67-6621. Duties of lobbyists.	2424
§ 67-6622. Docket — Contents — Reports to legislature — Subjects of legislation — Written authorization.	2427
§ 67-6623. Duties of secretary of state and county clerks.	2428
§ 67-6624. Statements to be certified.	2431
§ 67-6625. Violations — Civil fine — Misdemeanor penalty — Prosecution — Limitation — Venue.	2432
§ 67-6625A. Late filing of statement or report — Fees.	2434
§ 67-6626. Injunctions.	2435
§ 67-6627. Persuasive poll concerning candidate must identify person or entity paying for poll.	2436
§ 67-6628. Electioneering communications — Statements.	2438
§ 67-6629. Severability.	2439

§ 67-6630. Construction.	2440
Chapter 67 IDAHO STATE COUNCIL ON DEVELOPMENTAL DISABILITIES	2441
§ 67-6701. Declaration of purpose.	2443
§ 67-6702. Definitions.	2445
§ 67-6703. Idaho state council on developmental disabilities.	2448
§ 67-6704. Composition.	2450
§ 67-6705. Appointment and term of office.	2452
§ 67-6706. Compensation and expenses.	2453
§ 67-6707. Organization of council — Employment of necessary personnel.	2454
§ 67-6708. Responsibilities and duties.	2455
§ 67-6709. Short title.	2458
§ 67-6710. [Amended and Redesignated.]	2459
Chapter 68 ECONOMIC ESTIMATES	2460
§ 67-6801. Economic estimates commission created.	2462
§ 67-6802. Duties of commission.	2463
§ 67-6803. Expenditure limits.	2464
Chapter 69 FOOD SERVICE FACILITIES	2466
§ 67-6901. Statement of public policy.	2468
§ 67-6902. Definitions.	2469
§ 67-6903. Food service facilities in public buildings.	2471
§ 67-6904. Other food service.	2473
§ 67-6905. Transition.	2474
Chapter 70 IDAHO SAFE BOATING ACT	2475
§ 67-7001. Purpose.	2479
§ 67-7002. Jurisdiction and authority.	2480
§ 67-7003. Definitions.	2481
§ 67-7004. Hull identification number.	2485
§ 67-7005. Capacity plate and certification.	2486
§ 67-7006. Capacity plate — Contents.	2487
§ 67-7007. Certification label — Contents.	2488

§ 67-7008. Certificate of number — Expiration — Fees.	2490
§ 67-7008A. Additional fees — Deposit into invasive species fund.	2494
§ 67-7009. Exemption from numbering provisions.	2497
§ 67-7010. Unnumbered vessels.	2498
§ 67-7011. Use permit — Expiration — Fees — Collection exemption. [Repealed.]	2499
§ 67-7012. Advisory committee.	2500
§ 67-7013. Remittance of fees.	2501
§ 67-7014. Administrative fees for vessels.	2507
§ 67-7015. Safety equipment — Additional regulations.	2509
§ 67-7016. Grossly negligent operation.	2510
§ 67-7017. Negligent operation.	2511
§ 67-7018. Unlicensed commercial vessels.	2512
§ 67-7019. Speed.	2513
§ 67-7020. Incapacity of operator.	2514
§ 67-7021. Divers' warning.	2515
§ 67-7022. Overloading.	2516
§ 67-7023. Overpowering.	2517
§ 67-7024. Water skiing.	2518
§ 67-7025. Interference with navigation.	2520
§ 67-7026. Restricted areas.	2521
§ 67-7027. Collisions, accidents and casualties — Reports.	2522
§ 67-7028. Enforcement.	2524
§ 67-7029. Agents of the department.	2525
§ 67-7030. Regattas, races, marine events, tournaments and exhibitions.	2527
§ 67-7031. Marking of water areas — Procedures — Local rules.	2529
§ 67-7032. Owner's responsibility — Presumption of consent.	2531
§ 67-7033. Penalties.	2532
§ 67-7034. Persons under the influence of alcohol, drugs or	2534

any other intoxicating substances.	
§ 67-7035. Aggravated operating while under the influence of alcohol, drugs or any other intoxicating substances.	2537
§ 67-7036. Testing blood of persons killed in vessel accidents.	2539
§ 67-7037. Test of operator for alcohol concentration, presence of drugs or other intoxicating substances.	2541
§ 67-7038. Mufflers and noise restrictions.	2544
§ 67-7039. Vessel Titling Act.	2547
§ 67-7040. Application to certain vessels.	2549
§ 67-7041. Liens and encumbrances — Filing — Notation on certificate — Constructive notice.	2551
§ 67-7042—67-7049. [Reserved.]	2552
§ 67-7050. Reciprocal agreements.	2552
§ 67-7051—67-7076. [Reserved.]	2554
§ 67-7077. Operation of vessels.	2554
§ 67-7078. Personal watercraft liveries.	2555
Chapter 71 RECREATIONAL ACTIVITIES	2557
§ 67-7101. Definitions.	2560
§ 67-7102. Requirement that snowmobile be numbered.	2565
§ 67-7103. Application for number — Attachment of validation stickers — Certificate — Application for transfer of certificate — Transfer of certificate fee — Temporary number — Fees.	2566
§ 67-7104. Nonresident snowmobile user certificate required.	2569
§ 67-7105. Government ownership.	2571
§ 67-7106. Distribution of moneys collected — County snowmobile fund — State snowmobile fund — State snowmobile search and rescue fund.	2572
§ 67-7107. County advisory committee.	2575
§ 67-7108. Prohibition against numbering by political subdivisions.	2576
§ 67-7109. Prohibition against highway operation — Exceptions.	2577

§ 67-7110. Restrictions.	2579
§ 67-7111. Accident resulting in personal injuries or property damage.	2581
§ 67-7112. Groomed snowmobile trails.	2582
§ 67-7113. Violations — Accountable for property damage.	2584
§ 67-7114. Operation under the influence of alcohol, drugs or any other intoxicating substance.	2586
§ 67-7115. Winter recreational parking permit — Fee — Fines — Permits for snowmobile owners — Exemptions.	2588
§ 67-7116. Printing, distribution and sale of winter recreational parking permits.	2590
§ 67-7117. Cross-country skiing recreation account.	2591
§ 67-7118. Distribution of fees.	2592
§ 67-7119. Cross-country skiing advisory committees. [Repealed.]	2594
§ 67-7120, 67-7121. [Reserved.]	2595
§ 67-7122. Application for certificate of number — Attachment of validation stickers — Certificate — Fees.	2595
§ 67-7123. Transfer of number certificates and restricted vehicle license plate.	2599
§ 67-7124. Off-highway vehicles — Nonresident — Off-highway vehicle user certificate required.	2601
§ 67-7125. Noise abatement.	2602
§ 67-7126. Establishment of account — Distribution of fees.	2605
§ 67-7127. Use of moneys in account.	2608
§ 67-7128. Off-road motor vehicle advisory committee — Creation — Selection — Term of office — Duty.	2609
§ 67-7129. Penalties. [Repealed.]	2611
§ 67-7130, 67-7131. [Reserved.]	2612
§ 67-7132. Rules and regulations.	2612
§ 67-7133. Responsibility for enforcement.	2613
Chapter 72 COMMISSION ON HISPANIC AFFAIRS	2614
§ 67-7201. Commission created — Appointment of members.	2616

§ 67-7202. Organization of commission.	2617
§ 67-7203. Resources and staffing.	2618
§ 67-7204. State departments, agencies and political subdivisions to cooperate.	2619
§ 67-7205. Powers and duties of the commission.	2620
§ 67-7206. Commission terminated. [Repealed.]	2621
Chapter 73 IDAHO STATE COUNCIL FOR THE DEAF AND HARD OF HEARING	2622
§ 67-7301. Declaration of purpose.	2624
§ 67-7302. Definitions.	2625
§ 67-7303. Idaho state council for the deaf and hard of hearing created.	2626
§ 67-7304. Composition.	2627
§ 67-7305. Appointment and term of office.	2629
§ 67-7306. Organization of council — Employment of necessary personnel.	2630
§ 67-7307. Responsibilities and duties.	2631
§ 67-7308. Short title.	2633
Chapter 74 IDAHO STATE LOTTERY	2634
§ 67-7401. Purpose.	2638
§ 67-7402. Idaho lottery agency created.	2639
§ 67-7403. Initiation and operation of the lottery.	2640
§ 67-7404. Definitions.	2641
§ 67-7405. Commission — Appointment — Chairman.	2644
§ 67-7406. Quorum — Meetings — Minutes — Compensation.	2645
§ 67-7407. Director.	2646
§ 67-7408. Powers and duties of the commission.	2647
§ 67-7409. Powers and duties of the director.	2649
§ 67-7410. Director of lottery security.	2653
§ 67-7411. Contracting with lottery game retailers.	2655
§ 67-7412. Selection of lottery game retailers.	2656

§ 67-7413. Termination of the lottery game retailer.	2658
§ 67-7414. Compensation for lottery game retailers.	2659
§ 67-7415. Sales to persons under the age of eighteen.	2660
§ 67-7416. Display of certificate of authority.	2661
§ 67-7417. Lottery game retailer bonding.	2662
§ 67-7418. Lottery game retailer accounting.	2663
§ 67-7419. Lottery game retailer payments.	2664
§ 67-7420. Contracts for major procurements.	2665
§ 67-7421. Lottery vendor disclosures for major procurements.	2666
§ 67-7422. Separation of vendors and retailers.	2668
§ 67-7423. Enforceability of contracts.	2669
§ 67-7424. Information under oath.	2670
§ 67-7425. Misstatements or omissions.	2671
§ 67-7426. Compliance with applicable laws.	2672
§ 67-7427. Vendor performance bonds.	2673
§ 67-7428. State lottery account.	2674
§ 67-7429. Prohibition on use of state funds.	2675
§ 67-7430. Temporary line of credit for start-up costs.	2676
[Repealed.]	
§ 67-7431. Cash receipts.	2677
§ 67-7432. Cash disbursements.	2678
§ 67-7433. Prize expense.	2679
§ 67-7434. Lottery dividends.	2680
§ 67-7435. Reimbursements for government services.	2682
§ 67-7436. Audits.	2683
§ 67-7437. Prizes.	2684
§ 67-7438. Prize claiming period.	2686
§ 67-7439. Taxes.	2687
§ 67-7440. Restricted players.	2689
§ 67-7441. Records.	2690
§ 67-7442. Open public meetings of the commission.	2691

§ 67-7443. Conflict of interest.	2692
§ 67-7444. Limitation on actions.	2693
§ 67-7445. Conditions of purchase.	2694
§ 67-7446. Restrictions.	2695
§ 67-7447. Lawful activity.	2696
§ 67-7448. Prohibited acts — Penalties.	2697
§ 67-7449. Cap on administrative costs.	2698
§ 67-7450. Audit of funds — Reports.	2699
§ 67-7451. Lottery exempt from state procurement act.	2701
§ 67-7452. Severability.	2702
Chapter 75 MARINE SEWAGE DISPOSAL ACT	2703
§ 67-7501. Legislative intent.	2705
§ 67-7502. Jurisdiction and authority.	2706
§ 67-7503. Definitions.	2707
§ 67-7504. Marine sanitation devices.	2709
§ 67-7505. Prohibition against discharge of sewage or other wastes.	2710
§ 67-7506. Enforcement.	2711
§ 67-7507. Penalties.	2712
§ 67-7508. Disposition of fines.	2713
§ 67-7509. Severability.	2714
Chapter 76 IDAHO HERITAGE TRUST	2715
§ 67-7601,67-7602. [Null and void.]	2717
§ 67-7602A. Heritage resources.	2718
§ 67-7602B. Funding.	2719
§ 67-7603. [Null and void.]	2721
§ 67-7604. Annual audit. [Repealed.]	2722
Chapter 77 BINGO AND RAFFLES	2723
§ 67-7701. Purpose and policy.	2725
§ 67-7702. Definitions.	2727
§ 67-7703. Bingo-raffle advisory board established.	2732
§ 67-7704. Bingo-raffle advisory board — Members —	2733

Appointment — Qualifications.	
§ 67-7705. Quorum — Meetings — Minutes — Compensation.	2735
§ 67-7706. Bingo-raffle advisory board — Powers — Duties.	2736
§ 67-7707. Bingo by charitable or nonprofit organizations.	2738
§ 67-7708. Limit on sessions and bingo prizes.	2740
§ 67-7709. Accounting and use of bingo proceeds.	2741
§ 67-7710. Raffles — Duck races.	2748
§ 67-7711. Licensing procedure.	2751
§ 67-7712. License fees — Suspension or revocation.	2755
§ 67-7713. Licensure requirements.	2759
§ 67-7714. Rules and forms.	2760
§ 67-7715. Vendors — Licensing — Fees.	2761
§ 67-7716. Electronic bingo device and site systems — Approval required.	2764
§ 67-7717. Manufacturing and distributing requirements.	2765
§ 67-7718. Licensed distributor requirements and duties.	2767
§ 67-7719. Licensed organizations — Use of electronic bingo devices.	2769
Chapter 78 PACIFIC NORTHWEST ECONOMIC REGION	2771
§ 67-7801. Legislative findings.	2773
§ 67-7802. Pacific northwest economic region.	2774
§ 67-7803. Cooperative activities.	2778
Chapter 79 RESTRICTIONS ON PUBLIC BENEFITS	2779
§ 67-7901. Legislative findings.	2781
§ 67-7902. Definitions.	2782
§ 67-7903. Verification of lawful presence — Exceptions — Reporting.	2783
Chapter 80 REGULATORY TAKINGS	2788
§ 67-8001. Declaration of purpose.	2790
§ 67-8002. Definitions.	2791
§ 67-8003. Protection of private property.	2792

§ 67-8004. Short title.	2795
Chapter 81 IDAHO HOUSING TRUST FUND	2796
§ 67-8101. Purpose.	2798
§ 67-8102. Definitions.	2799
§ 67-8103. Use of funds for loans and grant projects to provide housing — Eligible activities.	2801
§ 67-8104. Eligible organization.	2803
§ 67-8105. Notice of grant and loan application period — Priorities — Criteria for evaluation.	2804
§ 67-8106. Advisory commission.	2806
§ 67-8107. Association to implement the allocation plan.	2808
§ 67-8108. Preconstruction technical assistance.	2809
§ 67-8109. Compliance monitoring.	2810
Chapter 82 DEVELOPMENT IMPACT FEES	2811
§ 67-8201. Short title.	2813
§ 67-8202. Purpose.	2814
§ 67-8203. Definitions.	2816
§ 67-8204. Minimum standards and requirements for development impact fees ordinances.	2823
§ 67-8204A. Intergovernmental agreements.	2829
§ 67-8205. Development impact fee advisory committee.	2830
§ 67-8206. Procedure for the imposition of development impact fees.	2832
§ 67-8207. Proportionate share determination.	2835
§ 67-8208. Capital improvements plan.	2837
§ 67-8209. Credits.	2841
§ 67-8210. Earmarking and expenditure of collected development impact fees.	2843
§ 67-8211. Refunds.	2845
§ 67-8212. Appeals.	2847
§ 67-8213. Collection.	2848
§ 67-8214. Other powers and rights not affected.	2849

§ 67-8215. Transition.	2851
§ 67-8216. Severability.	2852
Chapter 83 IDAHO FOOD QUALITY ASSURANCE INSTITUTE	2853
§ 67-8301. Idaho food quality assurance institute created.	2855
§ 67-8302. Commissioners — Chairman — Appointments.	2856
§ 67-8303. Vice-chairman, executive director and other personnel — Appointments — Quorum.	2858
§ 67-8304. Powers of the institute.	2859
§ 67-8305. Deposit and disbursement of funds.	2861
§ 67-8306. Limit on state liability — Compensation and expenses.	2863
Chapter 84 [RESERVED]	2864
Chapter 85 IDAHO HALL OF FAME ADVISORY BOARD	2865
§ 67-8501. Purpose. [Repealed.]	2867
§ 67-8502. Creation — Composition. [Repealed.]	2868
§ 67-8503. Duties and responsibilities. [Repealed.]	2869
§ 67-8504. Idaho hall of fame building advisory board fund. [Repealed.]	2870
Chapter 86 LEWIS AND CLARK TRAIL COMMITTEE	2871
§ 67-8601. Governor's Idaho Lewis and Clark trail committee fund.	2873
Chapter 87 IDAHO BOND BANK AUTHORITY	2874
§ 67-8701. Short title.	2877
§ 67-8702. Definitions.	2878
§ 67-8703. Bond bank authority created — Membership — Vacancies — Officers — Quorum — Compensation.	2879
§ 67-8704. Retention of outside services.	2881
§ 67-8705. Powers and duties of the authority.	2882
§ 67-8706. Annual report.	2884
§ 67-8707. Negotiability of bonds.	2885
§ 67-8708. Bonds as legal investments.	2886
§ 67-8709. Tax exemption.	2887

§ 67-8710. Issuance of bonds — Form of issuance — Sale price — Payment or refunding of bonds — Terms of agreement with bondholder.	2888
§ 67-8711. Purchase and disposition of bonds.	2891
§ 67-8712. Presumption of validity.	2892
§ 67-8713. Reserve fund — Additional funds and accounts.	2893
§ 67-8714. Personal liability.	2896
§ 67-8715. Exemption from execution and sale.	2897
§ 67-8716. Unlimited sales tax receipts pledge.	2898
§ 67-8717. Lien of pledge.	2901
§ 67-8718. Credit enhancement or liquidity.	2902
§ 67-8719. Surety for deposits by bank.	2903
§ 67-8720. Expenses of administration.	2904
§ 67-8721. Swaps.	2905
§ 67-8722. Municipal bonds.	2906
§ 67-8723. Complete authority.	2907
§ 67-8724. Rights not to be impaired by state.	2908
§ 67-8725. Payment transfer — Notice of nonpayment — State financial assistance intercept mechanism — State treasurer duties — Interest and penalty provisions.	2909
§ 67-8726. Cooperation by government agencies.	2914
§ 67-8727. Alternative intercept procedure.	2915
§ 67-8728. Limited exemption from intercept provisions. [Repealed.]	2920
§ 67-8729. Idaho bond bank administrative fund.	2921
Chapter 88 IDAHO LAW ENFORCEMENT, FIREFIGHTING AND EMS MEDAL OF HONOR	2923
§ 67-8801. Idaho law enforcement, firefighting and EMS medal of honor established.	2925
§ 67-8802. Idaho law enforcement, firefighting and EMS medal of honor commission created — Membership — Establishment of qualifications for award.	2926
§ 67-8803. When and by whom awarded.	2928

§ 67-8804. Posthumous award.	2929
§ 67-8805. Design and cost.	2930
§ 67-8806. Definitions.	2931
§ 67-8807. Nominations.	2933
§ 67-8808. Qualifications.	2934
Chapter 89 IDAHO ENERGY RESOURCES AUTHORITY ACT	2935
§ 67-8901. Short title.	2938
§ 67-8902. Declaration of necessity and purpose.	2939
§ 67-8903. Definitions.	2941
§ 67-8904. Creation of Idaho energy resources authority.	2944
§ 67-8905. Directors — Terms of office — Appointment — Filling vacancies and removal.	2945
§ 67-8906. Quorum — Mode of action — Compensation.	2946
§ 67-8907. Organizational meeting — Chairman — Secretary and treasurer — Executive director — Delegation of power — Surety bond and conflict of interest.	2947
§ 67-8908. Powers.	2949
§ 67-8909. Development, acquisition and construction of facilities.	2954
§ 67-8910. Management and operation of facilities.	2956
§ 67-8911. Sale of electricity, product or service from facilities — Charges.	2957
§ 67-8912. Cost recovery and rate stabilization charges of participating utilities.	2959
§ 67-8913. Cooperation with other agencies and subdivisions.	2961
§ 67-8914. Exemption from income taxation.	2962
§ 67-8915. Issuance of bonds to finance facilities.	2963
§ 67-8916. Refunding bonds.	2967
§ 67-8917. Payment of bonds — Nonliability of state.	2968
§ 67-8918. State's pledge.	2970
§ 67-8919. Fees.	2971
§ 67-8920. Exemption of real property of authority from levy and sale by execution.	2972

§ 67-8921. Annual report.	2973
§ 67-8922. Authority obligations are legal investments.	2974
§ 67-8923. Chapter not a limitation of powers.	2976
§ 67-8924. Constitutionality.	2977
§ 67-8925. Renewable energy generation projects.	2978
§ 67-8926. Conservation measures.	2979
Chapter 90 IDAHO RURAL DEVELOPMENT PARTNERSHIP ACT	2981
§ 67-9001. Short title.	2983
§ 67-9002. Legislative findings.	2984
§ 67-9003. Definitions.	2986
§ 67-9004. Idaho rural development partnership created.	2988
§ 67-9005. Responsibilities.	2989
§ 67-9006. Board of directors.	2991
§ 67-9007. Cochairs.	2994
§ 67-9008. Executive director.	2995
§ 67-9009. General membership.	2996
§ 67-9010. Performance evaluations of state employees.	2997
Chapter 91 IDAHO OUTDOOR SPORT SHOOTING RANGE ACT	2998
§ 67-9101. Definitions.	3000
§ 67-9102. State outdoor sport shooting ranges — Operation and use — Noise standards — Measurement.	3001
§ 67-9103. Nuisance action.	3003
§ 67-9104. Noise buffering or attenuation for new use.	3004
§ 67-9105. Preemption of local authority.	3005
Chapter 92 STATE PROCUREMENT ACT	3006
§ 67-9201. Short title.	3009
§ 67-9202. Declaration of policy.	3010
§ 67-9203. Definitions.	3011
§ 67-9204. Division of purchasing — Administrator.	3013
§ 67-9205. Powers and duties of the administrator.	3014

§ 67-9206. Delegation of authority.	3016
§ 67-9207. Procurement training.	3017
§ 67-9208. Solicitations.	3018
§ 67-9209. Bids.	3022
§ 67-9210. Award of contract.	3023
§ 67-9211. Multiple awards.	3025
§ 67-9212. Contracts shall be in writing.	3026
§ 67-9213. Contracts in violation of provisions of the act.	3027
§ 67-9214. Acceptance of property.	3031
§ 67-9215. Preservation and disclosure of records — Exception.	3032
§ 67-9216. Open contracts.	3033
§ 67-9217. Disqualification of vendors.	3034
§ 67-9218. Payment of contractors.	3035
§ 67-9219. Contract oversight.	3036
§ 67-9220. Inventories.	3037
§ 67-9221. Noncompetitive and emergency procurements.	3038
§ 67-9222. Nonowned property.	3039
§ 67-9223. Exchange of state property.	3040
§ 67-9224. Cooperative and group discount purchasing.	3041
§ 67-9225. Procurement by state institutions of higher education.	3042
§ 67-9226. Discounts.	3043
§ 67-9227. Contracts with federal government exempt from certain provisions.	3044
§ 67-9228. Acquisition of property — General services administration federal supply schedule contracts.	3045
§ 67-9229. Application of administrative procedure act.	3046
§ 67-9230. Prohibitions.	3047
§ 67-9231. Penalties.	3049
§ 67-9232. Challenges and appeals.	3050
§ 67-9233. Ethics in procurement.	3056

§ 67-9234. Severability.	3058
Chapter 93 COMMITTEE ON FEDERALISM	3059
§ 67-9301. Committee on federalism — Appointment of members — Organization — Powers and duties. [Null and void, effective July 1, 2021.]	3061
Chapter 94 OCCUPATIONAL LICENSING REFORM ACT	3063
§ [67-9401] 67-9301. Short title.	3066
§ [67-9402] 67-9302. Declaration of policy.	3067
§ [67-9403] 67-9303. Definitions.	3068
§ [67-9404] 67-9304. Military education, training, and service — Qualifications for licensure.	3069
§ [67-9405] 67-9305. Expedited application — Members of the military, veterans, and spouses.	3070
§ [67-9406] 67-9306. Licensure by endorsement — Members of the military, veterans, and spouses.	3071
§ [67-9407] 67-9307. Report to legislature.	3072
§ 67-9408. Occupational and professional licensure review committee.	3073
§ 67-9409. Universal licensure.	3077
§ 67-9410. Inquiry regarding the potential impact of a criminal conviction.	3079
§ 67-9411. Evaluation of criminal convictions.	3080
Chapter 95 COMPENSATORY MITIGATION FOR IMPACTS TO WETLANDS	3081
§ 67-9501. Legislative findings and purpose.	3083
§ 67-9502. Definitions.	3084
§ 67-9503. Limitations.	3086
Chapter 96 DAYLIGHT SAVING TIME	3088
§ 67-9601. Daylight saving time.	3090